

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATEDecember 18, 2015

MEETING LOCATIONState Finance Commission Bldg.
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

CONTACT INFORMATION.....Phone: (512) 936-6222
Email: Finance.Commission@fc.texas.gov
Website: www.fc.texas.gov

FUTURE MEETING DATESFebruary 19, 2016
April 15, 2016
June 10, 2016

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106*

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FINANCE COMMISSION AGENDA

Friday, December 18, 2015

8:00 a.m.

Finance Commission Building
William F. Aldridge Hearing Room
2601 N. Lamar Blvd.
Austin, Texas 78705

Section A.3 will take up the following agenda items with NO DISCUSSION as notated in bold and italicized A1, B1-B5, B9-B10

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

- 1. *Review and Approval of the Minutes of the October 16, 2015, Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda

B. AGENCY RULES

FINANCE COMMISSION

- 1. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings***

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

- 2. *Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 Concerning Savings and Loan Associations***
- 3. *Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapters 75-77 Concerning Savings Banks***

OFFICE OF CONSUMER CREDIT COMMISSIONER

- 4. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure***
- 5. *Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 85, Subchapter B, Regarding Crafted Precious Metal Dealers***

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, and 83.4002; the Adoption of New §83.4003 (repeal and replace), §83.5003, and §83.5004; and on the Adoption of the Repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004; in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New §83.3003 (repeal and replace); the Proposal and Publication for Comment on Amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and on the Proposal and Publication for Comment on the Repeal of §83.3003 (repeal and replace); in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review

TEXAS DEPARTMENT OF BANKING

9. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies*
10. *Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §17.23 Concerning Trust Company Call Reports*
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §5.101, Concerning Employee Training and Education Assistance Programs
12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, §33.13 Concerning Processing Times for Certain Money Service Business Applications

A. FINANCE COMMISSION MATTERS (CONTINUED)

4. Finance Commission Operations
5. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Fiscal Year 2016 Internal Auditor's Risk Assessment And Audit Plan for the Finance Commission Agencies
 - B. Discussion of and Possible Vote to Award Final Selection of Organizations, to Receive Grant Funds in an Aggregate Amount Not to exceed \$250,000 From the Texas Financial Education Endowment Fund
6. Discussion of the Process for the 2017 – 2021 Strategic Plans for the Finance Commission Agencies
7. Discussion of and Possible Vote to Take Action on the Revisions of the Finance Commission's Policies and Procedures

8. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
9. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
10. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation

C. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations - State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; and d) Other Items
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity

D. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 15-50168, in the United States Court of Appeals for the Fifth Circuit

E. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest

2. Discussion of and Possible Vote to Take Action on the Appointment of Rebecca Ann Motley to Serve as the Consumer Representative of the Guaranty Fund Advisory Council for the period January 1, 2016 – December 31, 2017
3. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas.

NOTE: The Finance Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, October 16, 2015
9:00 a.m.**

The Finance Commission of Texas convened at 9:00 a.m. on October 16, 2015, with the following members present: Bill White, Chairman, Paul Plunket, Vice Chair, Susan Burton, Stacy London, Larry Patton, Lori McCool, Victor Leal, Jay Shands, and Cindy Lyons. Members absent: Will Lucas and Jonathan Newton.

Chairman White announced that there was a quorum of the Finance Commission of Texas with 9 members present. Stacy London made a motion to excuse the absences of Will Lucas and Jonathan Newton. Cindy Lyons seconded and the motion passed (*00:13 on audio file*).

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. FINANCE COMMISSION MATTERS		
1. Review and Approval of the Minutes of the August 21, 2015 Finance Commission Meeting	On Consent Agenda – Item A1 This item approved on the Consent Agenda.	1:07 start of discussion
2. General Public Comment	No Action Required.	1:36 start of discussion
3. Consent Agenda - Items A1, B2-B3, C2-C8, D4 & D5	Stacy London made a motion to approve the Consent Agenda with the exception of item C3 which was removed from the Consent Agenda. Jay Shands seconded and the motion passed.	2:10 start of discussion 2:30 vote
4. Finance Commission Operations	No Action Required.	2:45 start of discussion
5. Audit Committee Report		
A. Discussion and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' August 31, 2015 Investment Officer Reports 1. Office of Consumer Credit Commissioner 2. Texas Department of Banking 3. Department of Savings and Mortgage Lending	Coming upon recommendation from the Audit Committee, no second is required and the motion passed.	4:17 start of discussion 4:54 vote

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' 2015 Fourth Quarter Financial Statements</p> <ol style="list-style-type: none"> 1. Office of Consumer Credit Commissioner 2. Texas Department of Banking 3. Department of Savings and Mortgage Lending 	<p>Coming upon recommendation from the Audit Committee, no second is required and the motion passed.</p>	<p>5:05 start of discussion 5:17 vote</p>
<p>C. Report on Activities Relating to the Texas Financial Education Endowment Fund</p>	<p>No Action Required.</p>	<p>5:27 start of discussion</p>
<p>6. Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System</p>	<p>Susan Burton made a motion to approve the Report on the Financial Condition of the State Banking System. Jay Shands seconded and the motion passed.</p>	<p>5:48 start of discussion 12:40 vote</p>
<p>7. Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2015 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and Department of Savings and Mortgage Lending</p>	<p>Cindy Lyons made a motion to approve the Accomplishment Reports for Fiscal Year 2015 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and Department of Savings and Mortgage Lending. Stacy London seconded and the motion passed.</p>	<p>13:12 start of discussion 24:55 vote</p>
<p>8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings</p>	<p>Larry Patton made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. Jay Shands seconded and the motion passed.</p>	<p>25:43 start of discussion 32:24 vote</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
9. Discussion of and Possible Vote to take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff	Deferred to Executive Session – no vote taken.	n/a
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
11. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken.	n/a
B. OFFICE OF CONSUMER CREDIT COMMISSIONER		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	33:11 start of discussion
2. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses	On Consent Agenda – Item B2 This item approved on the Consent Agenda.	n/a
3. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 90, Concerning Chapter 342, Plain Language Contract Provisions	On Consent Agenda – Item B3 This item approved on the Consent Agenda.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments and New Rule in 7 TAC, Chapters 84, 86, and 90, Concerning Plain Language Contracts, Resulting from Rule Review	Stacy London made a motion to approve the Adoption of Amendments and New Rule in 7 TAC Chapters 84, 86, and 90, Concerning Plain Language Contracts, Resulting from Rule Review. Jay Shands seconded and the motion passed.	47:52 start of discussion 50:53 vote
5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review	Victor Leal made a motion to propose the Proposal of Publication for Comment on Amendments, New Rules, and Repeals in 7 TAC, Chapter 83, Subchapter B (except for 83.5006 and 83.5007 which were withdrawn from consideration) concerning rules for credit access businesses resulting from rule review. Cindy Lyons seconded and the motion passed.	52:22 start of discussion 1:35:52 vote
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New 7 TAC, §82.5, Concerning Contested Case Hearing Notice, Response, and Default	This rule was withdrawn from consideration.	1:36:26 start of discussion
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure	Susan Burton made a motion to approve the proposal and publication for comment on Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, regarding contested case procedure. Stacy Lyons seconded and the motion passed.	1:36:50 start of discussion 1:38:45 vote
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. DEPARTMENT OF BANKING		
1. Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative and Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activities; and i) General Items of Interest	No Action Required.	1:39:46 start of discussion
2. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §33.4 Concerning Payment Processors	On Consent Agenda – Item C2 This item approved on the Consent Agenda.	
3. Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §§6.1-6.6 Concerning Banking Development Districts	Larry Patton made a motion to adopt 7 TAC §§6.1-6.6 with non-substantive changes to the proposal as previously published in the <i>Texas Register</i> . Jay Shands seconded and the motion passed.	01:55:50 start of discussion 01:58:50 vote
4. Discussion of and Possible Vote Take Action on the Adoption of Amendments to 7 TAC §3.36 and §3.37 Concerning Bank Assessments	On Consent Agenda – Item C4 This item approved on the Consent Agenda.	
5. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 15 Concerning Corporate Activities	On Consent Agenda – Item C5 This item approved on the Consent Agenda.	
6. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 17 Concerning Trust Company Regulation	On Consent Agenda – Item C6 This item approved on the Consent Agenda.	

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
7. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 19 Concerning Trust Company Loans and Investments	On Consent Agenda – Item C7 This item approved on the Consent Agenda.	
8. Discussion of and Possible Vote to Take Action on the Rule Review of 7 TAC, Chapter 21 Concerning Trust Company Corporate Activities	On Consent Agenda – Item C8 This item approved on the Consent Agenda.	
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies	Stacy London made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies. Cindy Lyons seconded and the motion passed.	01:59:10 start of discussion 02:05:04 vote
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC §17.23 Concerning Trust Company Call Reports	Susan Burton made a motion to approve the Proposal and Publication for Comment on Amendments to 7 TAC §17.23 Concerning Trust Company Call Reports. Jay Shands seconded and the motion passed.	02:05:26 start of discussion 02:06:20 vote
11. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Discussion - No Action Required.	n/a
D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING		
1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Other Items	No Action Required.	2:06:55 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; and d) Other Items	No Action Required.	2:10:15 start of discussion
3. Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; c) Other Items; and d) Legislative Activity	No Action Required.	2:26:03 start of discussion
4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §80.201 Concerning Loan Status Forms, §80.203 Concerning Advertising, and §80.204 Concerning Books and Records	On Consent Agenda – Item D4 This item approved on the Consent Agenda.	
5. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §81.200 Concerning Required Disclosures, §81.201 Concerning Loan Status Forms, and §81.204 Concerning Books and Records	On Consent Agenda – Item D5 This item approved on the Consent Agenda.	
6. Discussion of and Possible Action Regarding Anticipated and Pending Litigation	No Discussion - No Action Required.	n/a

Chairman Bill White called for an Executive Session at 11:45 a.m. (2:26:57 on the audio file). The open meeting resumed at 12:01 p.m. (2:27:08 on the audio file).

There being no further business, Chairman Bill White adjourned the meeting of the Finance Commission at 12:01 p.m. (2:28:47 on audio file).

William J. White, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Anne Benites, Executive Assistant
Finance Commission of Texas

Finance Commission of Texas

Consent Agenda

December 18, 2015

A. FINANCE COMMISSION MATTERS

Finance Commission Matters

1. Review and Approval of the Minutes of the October 16, 2015, Finance Commission Meeting

B. AGENCY RULES

FINANCE COMMISSION

1. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

2. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71 and 73 Concerning Savings and Loan Associations
3. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapters 75-77 Concerning Savings Banks

OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure
5. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 85, Subchapter B, Regarding Crafted Precious Metal Dealers

TEXAS DEPARTMENT OF BANKING

9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, §21.24 Concerning Exemptions for Family Trust Companies
10. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §17.23 Concerning Trust Company Call Reports

Future Meetings Rule Schedule

Rules	Short Title/Purpose	Projected Proposal Date for Presentation to Finance Commission	Agency
7 TAC, Chapters 51, 53, 57, 59, 61, 63-65, 67, 69, 71, and 73	Various amendments to the rules in these chapters concerning Savings and Loan Associations. These amendments are to modernize the chapters and to make clerical or minor technical changes, all non-substantive, as a result of the recent rule review of these chapters.	02/19/16	SML
7 TAC, Chapters 75-77	Various amendments to the rules in these chapters concerning Savings banks. These amendments are to modernize the chapters and to make clerical or minor technical changes, all non-substantive, as a result of the recent rule review of these chapters.	02/19/16	SML
7 TAC, Chapter 79	Residential Mortgage Loan Servicers <i>Rule Review</i>	04/15/16	SML
7 TAC, Chapter 80	Texas Residential Mortgage Loan Companies <i>Rule Review</i>	04/15/16	SML
7 TAC, Chapter 81	Mortgage Bankers and Residential Mortgage Loan Originators <i>Rule Review</i>	04/15/16	SML
7 TAC, Chapter 84	Motor Vehicle Installment Sales <i>Rule Review</i>	02/19/16	OCCC
7 TAC, §15.42	Concerning Relocation of Branch Offices	02/19/16	DOB
7 TAC, § 21.43	Concerning Out of State Bank Trust Offices	02/19/16	DOB

7 TAC Chapter 19	Concerning Trust Company Loans and Investments	02/19/16	DOB
7 TAC Chapter 24	Concerning Timeline for Processing Appeals of Cemetery Brokers	02/19/16	DOB
7 TAC Chapter 31	Concerning Timeline for Processing Appeals of Private Child Support Enforcement Agencies	02/19/16	DOB
7 TAC Chapter 35	Concerning Timeline for Processing Appeals of Check Verification Entities	02/19/16	DOB

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B.

Agency Rules

B. AGENCY RULES

FINANCE COMMISSION MATTERS

1. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

PURPOSE: The purpose of the amendments is to update and clarify certain contested case procedural rules applicable to the finance agencies. Regarding §9.1, the purpose of the amendments is to clarify the rules applicable to different forums in which contested cases may be heard for individuals and entities regulated by the finance agencies. Regarding §9.12, the purpose of the amendments is to clarify that the finance agencies may informally dispose of contested cases by default, as authorized by Section 2001.056 of the Texas Government Code.

RECOMMENDED ACTION: The finance agencies request that the Finance Commission approve the amendments to 7 TAC, Chapter 9 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC, Chapter 9.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

§9.1. Application, Construction, and Definitions [~~Definitions and Interpretation; Severability~~]

§9.12. Default

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. Specifically, the amendments are adopted in §9.1, concerning Application, Construction, and Definitions (former title: Definitions and Interpretation; Severability); and in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7518).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to update and clarify certain contested case procedural rules applicable to the finance agencies (Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner).

Regarding §9.1, the purpose of the amendments is to clarify the rules applicable to different forums in which contested cases may be heard for individuals and entities regulated by the finance agencies.

Regarding §9.12, the purpose of the amendments is to clarify that the finance agencies may informally dispose of contested cases by default, as authorized by

Section 2001.056 of the Texas Government Code.

The following background information relates to the adopted amendments in §9.1, regarding contested case forums.

Some of the finance agencies have contracted with a licensed attorney to serve as an administrative law judge and conduct contested case hearings. This administrative law judge used by the Texas Department of Savings and Mortgage Lending (SML) and by the Office of Consumer Credit Commissioner (OCCC) elected to not renew the contract for the 2016 fiscal year. In order to provide an appropriate, timely, and transparent forum to persons subject to SML and OCCC regulation, these two finance agencies entered into contracts with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings.

In contrast, the Texas Department of Banking has contracted with another administrative law judge for this fiscal year. At present, contested cases for the Texas Department of Banking will continue to be governed by the rules contained in 7 TAC, Chapter 9.

With regard to the SML and the OCCC, the law requires that SOAH's rules of procedure control a contested case conducted by SOAH. In order to clarify the application of procedural rules in various forums, the adopted amendments have been made for persons regulated by the SML and

the OCCC whose cases may be heard by SOAH.

Additionally, should any of the finance agencies have the need to utilize a different contested case forum in the future, the amendments will provide the flexibility for contested cases to be heard by either a contracted administrative law judge or by SOAH.

The adopted amendments to §9.1 add new subsection (a), which states that the rules provided in Chapter 9 govern contested case hearings conducted by an administrative law judge employed or contracted by one of the finance agencies. The amendments to §9.1 further explain that contested case hearings conducted by SOAH are governed by SOAH's procedural rules.

The amendments also revise the title of the rule to provide a more appropriate description of the amended content of the rule. The new title of "Application, Construction, and Definitions" has replaced the former title of §9.1, "Definitions and Interpretation; Severability." In addition, the existing subsections have been relettered accordingly.

The following background information relates to the adopted amendments in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

A contested case is a formal proceeding to determine the legal rights, duties, or privileges of licensees and applicants after an opportunity for an adjudicative hearing. The proceeding is governed by formal rules of procedure, which allow an agency to dispose of a case by default.

The finance agencies expend considerable resources preparing for and conducting contested case hearings where the respondent fails to appear at the hearing, or withdraws its request shortly before the hearing date. These costs are ultimately passed on to licensees and applicants in the form of higher license and renewal fees.

During the last session, the Texas Legislature expressed further support for disposing of cases by default according to the individual agency's rules. Therefore, the amendments to §9.12 further the Legislature's directive to conserve state resources where a party does not intend to proceed with a hearing.

The adopted amendments to §9.12 clarify the finance agencies' authority to informally dispose of a contested case by default. The amendments add a single sentence to the end of the existing rule. The additional sentence states that a finance agency may, as an alternative to conducting a hearing when a party fails to appear, informally dispose of the matter as permitted by Section 2001.056 of the Texas Government Code, without the necessity of a hearing. This amendment is consistent with Section 2001.056(4) of the Texas Government Code, as well as the Finance Commission's existing default procedures found within the current language of §9.12 (deeming the defaulting party to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense), and the default procedures of the State Office of Administrative Hearings found at 1 Texas Administrative Code §155.501.

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to

adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorize the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the department of savings and mortgage lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt

residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 339, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions [~~Definitions and Interpretation; Severability~~].

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code.

(b) [(a)] The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in Government Code, §2001.003, and the definitions in subsection (c) ~~[(b)]~~ of this section govern the interpretation of this chapter. If any section of this chapter is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this chapter.

(c) [(b)] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Administrative law judge--The hearings officer employed by or contracted by an agency to conduct administrative hearings for the finance commission, the department of banking, the department of savings and mortgage lending, and the office of consumer credit commissioner.

(2) Agency--The finance commission, the department of banking, the department of savings and mortgage lending, or the office of consumer credit commissioner.

(3) Agency head(s)--Finance commission members, the banking commissioner, the savings and mortgage lending commissioner, or the consumer credit commissioner, or a designee if authorized by law.

(4) Applicant--A party seeking a license, registration, charter, or permit, or to amend its authority under an existing license, registration, charter or permit, or other action from an agency.

(5) Protestant--A party opposing an application for a license, registration, charter, permit, or other action filed with an agency who has paid any filing fees required by an applicable law.

(6) Respondent--A permittee, licensee, registrant, charter holder, or other party against whom a disciplinary proceeding is directed by an agency.

§9.12. Default.

If, after served with notice in compliance with §9.11 of this title (relating to Notice and Initiation of Proceedings), a party fails to attend a hearing, the administrative law judge may proceed in that party's absence

and, where appropriate, may issue a proposal for decision against that party. The proposal for decision shall be served upon the defaulting party and the party will be afforded the opportunity to contest the law as stated in the proposal for decision, but shall be deemed to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense. In the alternative, an agency may informally dispose of the matter as permitted by §2001.056 of the Texas Government Code, without the necessity of a hearing.

2. Discussion and Possible Vote to Take Action on the Readoption of 7 TAC Chapters 51, 53, 57, 59, 61, 63 – 65, 67, 69, 71, and 73 relating to state savings and loan associations.

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency’s rule review and its determination as to whether the reasons for initially adopting the rule continue to exist.

Notice of the proposed review of 7 TAC Chapters 51, 53, 57, 59, 61, 63 – 65, 67, 69, 71, and 73 were published in the *Texas Register* as required on October 23, 2015 (40 TexReg 7446). The Department received no comments regarding the review.

RECOMMENDED ACTION: The Department recommends the Finance Commission find that the reasons for initially adopting the rule in Chapters 51, 53, 57, 59, 61, 63 – 65, 67, 69, 71, and 73 continue to exist, and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapters 51, 53, 57, 59, 61, 63 – 65, 67, 69, 71, and 73 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 51 (§§51.1 – 51.15) relating to Charter Applications.

Notice of the review of Chapter 51 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 51 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 53 (§§53.1 – 53.5, 53.7 – 53.10, 53.17 – 53.18) relating to Additional Offices.

Notice of the review of Chapter 53 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 53 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 57 (§§57.1 – 57.4) relating to Change of Office Location or Name.

Notice of the review of Chapter 57 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 57 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 59 (§59.1) relating to Foreign Building and Loan Associations.

Notice of the review of Chapter 59 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 59 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 61 (§§61.1 – 61.3) relating to Hearings.

Notice of the review of Chapter 61 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 61 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 63 (§§63.1 – 63.15) relating to Fees and Charges.

Notice of the review of Chapter 63 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 63 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 64 (§§64.1 – 64.10) relating to Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, Consumer Complaints.

Notice of the review of Chapter 64 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 64 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 65 (§§65.1 – 65.24) relating to Loans and Investments.

Notice of the review of Chapter 65 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 65 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 67 (§§67.1 – 67.4, 67.6 – 67.15, 67.17) relating to Savings and Deposit Accounts.

Notice of the review of Chapter 67 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 67 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 69 (§§69.1 – 69.11) relating to Reorganization, Merger, Consolidation, Acquisition, and Conversion.

Notice of the review of Chapter 69 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 69 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 71 (§§71.1 – 71.8) relating to Change of Control.

Notice of the review of Chapter 71 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 71 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 73 (§§73.1 – 73.6) relating to Subsidiary Corporations.

Notice of the review of Chapter 73 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 73 in accordance with the requirements of the Texas Government Code §2001.039.

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3. Discussion and Possible Vote to Take Action on the Readoption of 7 TAC Chapters 75 – 77 relating to savings banks.

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency’s rule review and its determination as to whether the reasons for initially adopting the rule continue to exist.

Notice of the proposed review of 7 TAC Chapters 75 – 77 were published in the *Texas Register* as required on October 23, 2015 (40 TexReg 7446). The Department received no comments regarding the review.

RECOMMENDED ACTION: The Department recommends the Finance Commission find that the reasons for initially adopting the rule in Chapters 75 – 77 continue to exist, and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC Chapters 75 – 77 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 75 Subchapter A (§§75.1 – 75.10) relating to Charter Applications; Subchapter B (§§75.25 – 75.27) relating to Expedited Applications; Subchapter C (§§75.31 – 75.36, 75.38 – 75.39, 75.41) relating to Additional Offices; Subchapter D (§§75.81 – 75.91) relating to Reorganization, Merger, Consolidation, Conversion, Purchase, and Assumption and Acquisition; and Subchapter E (§§75.121 – 75.127) relating to Change of Control.

Notice of the review of Chapter 75 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 75 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 76, Subchapter A (§§76.1 – 76.7, 76.12) relating to Books, Records, Accounting Practices, Financial Statements and Reserves; Subchapter B (§§76.21 – 76.26) relating to Capital and Capital Obligations; Subchapter C (§§76.41 – 76.47) relating to Holding Companies; Subchapter D (§76.61) relating to Foreign Savings Banks; Subchapter E (§§76.71 – 76.73) relating to Hearings; Subchapter F (§§76.91 – 76.103, 76.105 – 76.110) relating to Fees and Charges; Subchapter G (§76.121) relating to Statements of Policy; and Subchapter H (§§76.122) relating to Consumer Complaint Procedures.

Notice of the review of Chapter 76 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 76 in accordance with the requirements of the Texas Government Code §2001.039.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Department of Savings and Mortgage Lending has completed the review of Texas Administrative Code, Title 7, Part 4, Chapter 77, Subchapter A (§§77.1 – 77.11, 77.31, 77.33, 77.35, 77.51, 77.71, 77.73, 77.91 – 77.96) relating to Authorized Loans and Investments, and Subchapter B (§§77.115 – 77.116) relating to Savings and Deposits.

Notice of the review of Chapter 77 was published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7446). No comments were received in response to the notice.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 77 in accordance with the requirements of the Texas Government Code §2001.039.

B. AGENCY RULES

OFFICE OF CONSUMER CREDIT COMMISSIONER

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89, Regarding Contested Case Procedure

PURPOSE: The purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the OCCC.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89 without changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to 7 TAC, Part 1, Chapter 4, and Part 5, Chapters 83, 84, 85, 88, and 89.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 4. Credit Card Surcharge Appeal Procedures

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Chapter 84. Motor Vehicle Installment Sales

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Chapter 88. Consumer Debt Management Services

Chapter 89. Property Tax Lenders

The Finance Commission of Texas (commission) adopts amendments to the following sections of Title 7 of the Texas Administrative Code: §4.105, concerning the rules applicable to a contested case hearing on a credit card surcharge violation occurring on or before August 31, 2013; §83.307, concerning the rules applicable to a regulated lender license application denial hearing; §83.3007, concerning the rules applicable to a credit access business license application denial hearing; §84.608, concerning the rules applicable to a motor vehicle installment sales license application denial hearing; §85.206, concerning the rules applicable to a pawnshop employee license application denial hearing; §85.304, concerning the rules applicable to a pawnshop license application denial hearing; §85.607, concerning the rules applicable to a pawnshop license revocation, suspension, and surrender hearing; §88.103, concerning the rules applicable to a consumer debt management services registration application denial hearing; and §89.307, concerning the rules applicable to a property tax lender license application denial hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of

the *Texas Register* (40 TexReg 7517, 7523, and 7535).

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See*, 7 Tex. Admin. Code §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 Tex. Admin. Code §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation;

ADOPT AMENDMENTS
7 TAC, PART 1, CHAPTER 4
7 TAC, PART 5, CHAPTERS 83, 84, 85, 88, AND 89
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Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 1 (relating to the Finance Commission of Texas), contains one reference to the Chapter 9 rules of procedure concerning credit card surcharge violations regulated by the OCCC under Chapter 4. Section 4.105(b) identifies the rules of procedure applicable to a contested case hearing regarding a credit card surcharge violation occurring on or before August 31, 2013. The adopted amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 83.307(d) identifies the rules of procedure applicable to a regulated lender license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 83.3007(d) identifies the rules of procedure applicable to a credit access business license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 84.608(d) identifies the rules of procedure applicable to a motor vehicle installment sales license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.206(g) identifies the rules of procedure applicable to a pawnshop employee license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.304(e) identifies the rules of procedure applicable to a pawnshop license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.607 identifies the rules of procedure applicable to a pawnshop license revocation, suspension, and surrender

ADOPT AMENDMENTS
7 TAC, PART 1, CHAPTER 4
7 TAC, PART 5, CHAPTERS 83, 84, 85, 88, AND 89
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hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 88.103(d) identifies the rules of procedure applicable to a consumer debt management services registration application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 89.307(d) identifies the rules of procedure applicable to a property tax lender license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Regarding the adopted changes for Chapter 85, Subchapter A, Rules of Operation for Pawnshops, §371.006 of the Texas Finance Code contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the amendments to §§85.206, 85.304, and 85.607 will be March 1, 2016.

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance

Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

Title 7, Texas Administrative Code
Part 1. Finance Commission of Texas

Chapter 4. Credit Card Surcharge Appeal Procedures

§4.105. Contested Case on Credit Card Surcharge.

(a) (No change.)

(b) A contested case under this chapter is subject to Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~]. To the extent of any conflict between this chapter and Chapter 9, this chapter prevails.

(c) (No change.)

ADOPT AMENDMENTS
7 TAC, PART 1, CHAPTER 4
7 TAC, PART 5, CHAPTERS 83, 84, 85, 88, AND 89
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Title 7, Texas Administrative Code
Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

§83.307. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Subchapter B. Rules for Credit Access Businesses

§83.3007. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application

was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 84. Motor Vehicle Installment Sales

§84.608. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

ADOPT AMENDMENTS
7 TAC, PART 1, CHAPTER 4
7 TAC, PART 5, CHAPTERS 83, 84, 85, 88, AND 89
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Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

Division 2. Pawnshop License

§85.206. Processing of Application.

(a) - (f) (No change.)

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e) of this section, a hearing will be set. This hearing will be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision either approving or denying the license.

(h) (No change.)

Division 3. Pawnshop Employee License

§85.304. Processing of Application.

(a) - (d) (No change.)

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title~~]. When a hearing is requested following an initial license application denial, the hearing will be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner will make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(f) (No change.)

Division 6. License Revocation, Suspension, and Surrender

§85.607. Hearings.

Hearings held under this subchapter will be held in accordance with the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Administrative Hearing Process and Rules of Procedure in the Finance Commission Agencies, Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings (Chapter 9 of this title)~~], the Administrative Procedure Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

ADOPT AMENDMENTS
7 TAC, PART 1, CHAPTER 4
7 TAC, PART 5, CHAPTERS 83, 84, 85, 88, AND 89
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Chapter 88. Consumer Debt Management Services

§88.103. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 89. Property Tax Lenders

§89.307. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating~~

~~to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 18, 2015.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner

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B. AGENCY RULES

OFFICE OF CONSUMER CREDIT COMMISSIONER

5. Discussion of and Possible Vote to Take Action on the Completed Rule Review of 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 85, Subchapter B. The notice of the review was published in the *Texas Register* as required on November 13, 2015 (40 TexReg 8035). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. Amendments to the affected sections within Chapter 85, Subchapter B are being separately presented for proposal.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 85, Subchapter B as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 85, Subchapter B continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 85. Pawnshops and Crafted Precious Metal Dealers
Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 85, Subchapter B, concerning Rules for Crafted Precious Metal Dealers, comprised of §§85.1001-85.1011, and §85.2001-§85.2002, pursuant to Texas Government Code, §2001.039.

Notice of the review of 7 TAC, Part 5, Chapter 85, Subchapter B was published in the *Texas Register* as required on November 13, 2015, (40 TexReg 8035). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this subchapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to Chapter 85, Subchapter B, as published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 85, Subchapter B, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this subchapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 85, Subchapter B.

B. AGENCY RULES

OFFICE OF CONSUMER CREDIT COMMISSIONER

6. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, and 83.4002; the Adoption of New §83.4003 (repeal and replace), §83.5003, and §83.5004; and on the Adoption of the Repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004; in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

PURPOSE: The purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039. The amendments include clarifying changes regarding definitions, license applications, and fees. New sections outline examination authority and recordkeeping requirements, including a list of documents that credit access businesses are required to maintain. Section 83.4003 is being repealed and replaced with a reorganized rule regarding the review of criminal history. The content of former §83.4004 has been incorporated into new §83.4003. Section 83.3012 concerning provisional licenses has been repealed, as this rule is no longer necessary.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, and 83.4002; approve new §§83.4003, 83.5003, and 83.5004; and approve the repeal of §§83.3012, 83.4003 and 83.4004 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, and 83.4002; approve new §§83.4003, 83.5003, and §83.5004; and approve the repeal of §§83.3012, 83.4003 and 83.4004.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) adopts amendments to §§83.1002, 83.3001, 83.3002, 83.3006, 83.3010, 83.4002; and adopts new §83.4003 (repeal and replace), §83.5003, and §83.5004, in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. In addition, the commission adopts the repeal of §83.3012, §83.4003 (repeal and replace), and §83.4004.

The commission adopts the amendments to §§83.3001, 83.3002, 83.3006, 83.3010, and adopts new §83.4003 without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525).

The commission adopts the amendments to §83.1002 and §83.4002, and adopts new §83.5003 and §83.5004 with changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525). These changes are being made in order to incorporate suggested comments, as discussed in the following paragraph.

The commission received four written comments on the proposal from the following organizations: the Consumer Service Alliance of Texas; Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go; Texas Appleseed; and a comment jointly submitted by: Texas Catholic Conference, Texas Appleseed, Christian Life Commission, RAISE Texas, AARP Texas, Texas NAACP, Helping Hands of Belton, and the Center for Public Policy Priorities. The comments included

recommendations relating to definitions, recordkeeping (including a delayed implementation date for new records), and separation between credit access businesses and third-party lenders. One comment was generally supportive of the rules. The commission's response to the four official comments is included after the purpose discussions following each respective rule receiving comments.

In general, the purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The adopted amendments include clarifying changes regarding definitions, license applications, and fees. New sections outline examination authority and recordkeeping requirements, including a list of documents that credit access businesses are required to maintain.

Section 83.4003 is being proposed for repeal and replacement with a reorganized rule regarding the review of criminal history. The content of former §83.4004 has been incorporated into new §83.4003. Section 83.3012 concerning provisional licenses has been repealed, as this rule is no longer necessary.

This is the first of two anticipated rule actions for credit access businesses. The agency is concurrently presenting the second action for proposal in this issue of the *Texas Register*, which includes rule amendments

on the following issues: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The individual purposes of the adopted amendments, new rules, and repeals are outlined in the paragraphs to follow.

Section 83.1002 provides general definitions to be used throughout the chapter. The amendments to this section contain definitions for the terms "multiple payment auto title loan," "multiple payment payday loan," "single payment auto title loan," and "single payment payday loan." The agency intends to apply these definitions for purposes of the requirements for recordkeeping (new §83.5004), data reporting (current §83.5001), and disclosures (current §§83.6001 through 83.6008). Two commenters provided recommendations regarding these definitions. One commenter stated: "The definitions should describe the type of credit product, not the mechanism by which a CAB is compensated. . . . In subsections (7) and (8), we recommend inserting 'any' between 'including' and 'fees' in the following phrase: 'fees required under the terms of the transaction, including any fees required to be paid to a credit access business'." In response to this comment, paragraphs (7) and (8) include the word "any" after "including." The commission believes that it is appropriate for the definitions to provide that a product is a multiple-payment product if the consumer pays the fee to the credit access business in

multiple payments. The consumer enters two separate agreements in connection with a Chapter 393 transaction: an agreement with the credit access business and an agreement with the third-party lender. The disclosure and reporting requirements encompass fees paid in connection with both of these transactions. It would be incorrect to describe a transaction where the consumer must make multiple payments to the credit access business as a "single payment" transaction. The other commenter recommended that the definitions use the word "installment" instead of "multiple payment," because the commenter believed that this would be more consistent with the definition of "deferred presentment transaction" in Texas Finance Code, §393.221(2), which provides that the definition "does not preclude repayment in more than one installment." However, the agency has consistently used the phrases "multiple payment" and "multi-payment" in the rule for consumer disclosures at §83.6007 and the accompanying figures. The commission believes that the phrase "multiple payment" is appropriate for the definitions.

An amendment to §83.3001(2)(A) revises the definition of "principal party" for sole proprietorships. The amendment removes the statement that proprietors include spouses with a community property interest. In addition, an amendment to §83.3002(1)(A)(iv)(I) removes the requirement to disclose community property interests and documentation regarding separate property status, and replaces it with a requirement to disclose the names of the spouses of principal parties if requested. The agency currently spends considerable time requesting information from license applicants to determine the status of spouses' property interests, and explaining these

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concepts to applicants. These amendments will help streamline the licensing process. One commenter expressed concern about these two amendments, stating that they "could enable individuals to cloak shared ownership of a credit access business and a third-party lender." The commission believes that the existing requirement for applicants to disclose the names and addresses of third-party lenders under §83.3002(2)(E), together with the amended rule's requirement at §83.3002(1)(A)(iv)(I) to disclose information about spouses upon request, should be sufficient to address this issue. For this reason, the commission maintains the amendments for this adoption.

Adopted amendments to §83.3006 clarify the circumstances in which a licensee must notify the OCCC of changes to information in the original license application. The amendments specify that the requirement to provide updated information within 10 days applies before a license application is approved. New §83.3006(b) provides that a licensee must notify the OCCC within 30 days of knowledge of the information if the information relates to the names of principal parties or third-party lenders, criminal history, regulatory actions, or court judgments. New §83.3006(c) specifies that each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, and that it is a best practice for licensees to regularly review contact information.

An amendment to §83.3010(c) provides that a license applicant must pay a fee to a party designated by the Texas Department of Public Safety (DPS) for processing fingerprints, replacing a statement that the fee will be paid to the OCCC. This amendment conforms the rule to the method

by which applicants currently provide fingerprint information through DPS's Fingerprint Applicant Services of Texas (FAST) program.

An amendment to §83.3010(g)(1)(B) contains a technical correction for the method of calculating the volume-based portion of the annual assessment fee. Previously, the rule provided that the volume-based fee will not exceed "\$0.03 per each \$1,000 advanced . . . in accordance with the most recent quarterly report filing required by Texas Finance Code, §393.627." However, the total dollar amount of extensions of consumer credit is not part of the information the OCCC currently requests on the quarterly report. Rather, this information is requested on the annual report. For this reason, the adopted amendment specifies that the fee will be based on the most recent annual report under §83.5001. This amendment is intended to provide technical clarification.

Section 83.3012 has been repealed because it is no longer necessary. The agency issued provisional licenses during 2012 (the first year in which credit access businesses were licensed), but no longer issues provisional licenses.

Adopted amendments to §83.4002 clarify the agency's procedure for providing delinquency notices to licensees that have failed to pay an annual assessment fee. The amendments specify that notice of delinquency is considered to be given when the OCCC sends the notice by mail to the address on file with the OCCC as a master file address, or by e-mail to the address on file with the OCCC (if the licensee has provided an e-mail address). The amendments replace former language stating that notice is given upon mailing in a

properly addressed envelope. In response to an official comment, paragraph (2) states that it applies to a "master file e-mail address."

Adopted new §83.4003 specifies the criminal history information collected by the OCCC, outlines factors the OCCC will consider when reviewing criminal history information, and describes grounds for denial, suspension, and revocation of a credit access business license. This section replaces former §83.4003 and §83.4004, which have been repealed. Subsection (a) describes the OCCC's collection of criminal history record information from law enforcement agencies. Subsection (b) identifies the criminal history information that the applicant must disclose. Subsection (c) describes the OCCC's denial, suspension, and revocation based on crimes that are directly related to the licensed occupation of a credit access business. Subsection (c)(1) lists the types of crimes that the OCCC considers to directly relate to the duties and responsibilities of being a credit access business, including the reasons the crimes relate to the occupation, as provided by Texas Occupations Code, §53.025(a). One commenter suggested that the grounds for denial, suspension, or revocation in this subsection should be expanded, because a violation of Chapter 393 is a criminal violation under Texas Finance Code, §393.501. In particular, the commenter suggested that the subsection should include violations of Texas Finance Code, §393.201(c), which prohibits a credit access business from threatening or pursuing criminal charges against consumers in the absence of criminal conduct. The commission believes that a broader statement of directly related offenses is unnecessary, because the OCCC already has the authority to deny, suspend, or revoke a

license based on violations of Chapter 393 under Texas Finance Code, §393.607 and §393.614. *See also Peek v. Kelley*, 570 S.W.2d 118, 120 (Tex. Civ. App.--Austin 1978, writ ref'd n.r.e.) (holding that a license applicant's violations of the Texas Pawnshop Act demonstrated that the applicant did not "have such character as would warrant the belief that she would operate a pawn business lawfully and fairly within the purposes of the Act"). In addition, new §83.4003(f) allows the OCCC to deny, suspend, or revoke based on any grounds authorized by statute. For these reasons, the commission declines to adopt the suggested change.

Subsection (c)(2) of new §83.4003 contains the factors the OCCC will consider in determining whether a criminal offense directly relates to the duties and responsibilities of a licensee, as provided by Texas Occupations Code, §53.022. Subsection (c)(3) provides the mitigating factors the OCCC will consider to determine whether a conviction renders an applicant or licensee unfit, as provided by Texas Occupations Code, §53.023. Subsection (d) describes the OCCC's authority to deny a license application if it does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). Subsection (e) explains that the OCCC will revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision, as provided by Texas Occupations Code, §53.021(b). Subsection (f) identifies other grounds for

denial, suspension, or revocation, including convictions for specific offenses described by statutory provisions cited in the rule.

Adopted new §83.5003 describes the OCCC's examination authority for credit access businesses. This section implements Texas Finance Code, §393.622(a)(3), which allows the commission to "adopt rules with respect to periodic examination" of credit access businesses by the agency, as well as Texas Finance Code, §393.622(b), which authorizes the commission to "adopt rules . . . to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services." Subsection (a) provides that the OCCC may periodically examine each place of business of a licensee. Subsection (b) requires licensees to allow the OCCC to access their offices and make copies of records. Since the proposal, a technical correction has been made in subsections (a) and (b) to replace "investigate" with "inspect" and "investigated" with "inspected." Subsection (c) provides that the OCCC's examination authority includes the authority to examine third-party lender agreements. Subsections (d) and (e) allow the OCCC to take witness and records statements during an examination, and specifies the requirements of these statements. Unlike the other chapters of the Texas Finance Code that provide examination authority to the OCCC, Chapter 393 does not include express authority to take oaths. For this reason, under subsections (d) and (e), the OCCC may obtain unsworn statements, rather than sworn affidavits. The rule requires an acknowledgment that the statements could be used in an enforcement action in which the licensee is a party.

One commenter requested clarification regarding these amendments, stating: "We seek clarification in the commentary to the final rule that both of the proposed [sic] subsections are permissive, and refusal to give a statement to confer with management and/or counsel will not be deemed a violation of the proposed rule." Regarding records statements, licensees are required to provide the OCCC with access to their files and records, and licensees may not use the failure to provide a records statement as a way of impeding the OCCC's access to records. Regarding witness statements, the OCCC allows licensees to confer with management or counsel before providing a statement. Furthermore, the OCCC has always permitted a person signing a statement to review the statement with management or counsel before signing it. However, licensees should not use this process as a method of impeding an examination, and all witness statements should be provided by a person with personal knowledge of transactions.

Adopted new §83.5004 describes the recordkeeping requirements for credit access businesses. Paragraph (1) requires a transaction register showing the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction. Paragraph (2) outlines the information that must be included in the record of an individual consumer's account. Paragraph (2)(A) identifies the records that must be kept for every transaction, including required disclosures and any agreements with the consumer. In particular, paragraph (2)(A)(viii) requires the transaction file to include complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or

purchased by the consumer in connection with the transaction. Regarding this provision, one commenter suggested that the rule include two additional requirements: "1. In the event of an automobile club sale, files should include documentation that the automobile club was sold in compliance with the Texas Finance Code, which permits the product only when it is sold directly by the lender (Tx. Fin. Code §303.203). 2. In the event of any insurance sale, documentation that appropriate licenses were obtained in accordance with the Texas Finance Code and the Texas Insurance Code." Credit access businesses are responsible for ensuring that providers of ancillary products are authorized to do business in Texas and that the products are offered in compliance with applicable laws. However, the commission believes that it is unnecessary for the rule to require additional documentation regarding the provider's authorization to do business. In examinations, the OCCC generally verifies that the providers of any ancillary products are authorized to do business in Texas. This information is usually available on the website of the state agency that regulates the relevant product. For this reason, the commission declines to adopt the suggested change.

Paragraph (2)(B) of new §83.5004 identifies additional records for transactions that the licensee services or collects, including account histories, documentation of repossessed collateral, litigation records, and records of criminal charges. In particular, paragraph (2)(B)(i)(X) requires the licensee to maintain records of refunds of unearned charges for loans that are prepaid in full. Since the proposal, the phrase "or other amounts" has been added to this provision after "interest charges," in order to clarify that the provision applies to

refunds for unearned amounts other than interest charges (e.g., refunds for ancillary products such as credit life insurance). Paragraph (2)(B)(iv)(I) requires the licensee to maintain a vehicle condition report if a report was prepared by the licensee, the licensee's agent, or an independent contractor hired to perform the repossession. One commenter objected to this requirement, stating: "Vehicle condition reports are not a requirement under the Texas Business and Commerce Code. CABs should not be required to maintain copies of reports if they are prepared by third parties." The commenter is correct that vehicle condition reports are not required under Chapter 9 of the Texas Business and Commerce Code. However, the rule requires a licensee to maintain the report only if a report is prepared. The commission believes that this is an appropriate requirement to evidence the fact that any disposition was conducted in a commercially reasonable manner, as required by Texas Business and Commerce Code, §9.607(c) and §9.610. For this reason, the commission declines to adopt the suggested change.

Paragraph (2)(B)(iv)(III)(-f-) of new §83.5004 requires the licensee to maintain an explanation of the calculation of surplus or deficiency. Since the proposal, a technical change has been made to specify that this requirement applies if the explanation is required by Texas Business and Commerce Code, §9.616.

Paragraph (2)(C) of new §83.5004 specifies the time period for maintaining the information in the individual consumer's file, which generally must be kept for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. This provision is intended to ensure

that the licensee keeps transaction records at least until the time specified in applicable statutes of limitations, including the four-year limitations period in Texas Finance Code, §393.505.

Paragraph (3) of new §83.5004 requires a licensee to maintain agreements between the licensee and third-party lenders. Since the proposal, this provision has been amended to specify that the documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). Paragraph (4) requires a licensee to maintain the required in-store fee schedule and notices. Paragraph (5) requires a licensee to maintain online disclosures and copies of web pages used to access online disclosures. Paragraph (6) requires a licensee to maintain advertisements. Paragraph (7) requires a licensee to maintain credit applications and adverse action records for the time period specified in Regulation B, 12 C.F.R. §1002.12(b). Paragraph (8) requires a licensee to maintain an index of transfers, assignments, and sales. Paragraph (9) requires a licensee to maintain an index of litigation, criminal charges, and repossessions. Paragraph (10) requires a licensee to maintain records of its registration and surety bond as a credit services organization. Paragraph (11) requires a licensee to maintain an official correspondence file for communications with the OCCC. Paragraph (12) requires a licensee to maintain general business records showing its compliance with applicable laws.

As proposed, the rule action included new §83.5005, which described the requirements for separation between credit access businesses and third-party lenders. The proposed rule was based on Texas Finance Code, §393.001(3), which provides

that a credit services organization's services include obtaining for a consumer or assisting a consumer in obtaining an extension of consumer credit "by others." The proposed rule described the general separation requirement for credit access businesses and third-party lenders, explained that the relationship must be consistent with special agency, and prohibited a credit access business from sharing its fee with a third-party lender.

The agency received three official comments regarding the separation requirements in §83.5005. The first commenter recommended that the rule include the following statement: "A licensee may not require the use of specific underwriting criteria by a lender when determining whether to make a loan to a consumer, but a licensee may apply its own underwriting criteria or criteria selected by the third-party lender." The second commenter recommended that the rule further clarify the separation requirement. This commenter recommended that the rule include the following language: "There should be no common ownership, no common directors, no common officers or employees, nor any common ownership, officers, directors or employees with a first degree family relationship." This commenter also recommended that the rule include "in the definition of common ownership, a provision that extends to ownership by family members, such as parents, spouse, siblings, spouses of siblings, children, and other close family relationships."

The third commenter provided a study titled "Pulling Back the Curtain: Shining a Light on Payday and Auto Title Loan Businesses in Texas." The study describes data collected by a public interest law organization regarding relationships

between credit access businesses and third-party lenders. The study concludes that the data shows "limited competition" and "overlapping ownership among CABs and third-party lenders." Based on these conclusions, the study includes the following policy recommendation: "Establish clear and enforceable standards to ensure that CSOs do not evade the requirement that they arrange credit 'by others.' Standards should prohibit any overlap in ownership, officers, or employees between CABs and third-party lenders that service them, including family relationships among the different owners, as well as business partnerships where the same group of individuals own CABs and third-party lenders, evading the spirit of the law."

Proposed new §83.5005 has not been included in this rule adoption. The agency understands that stakeholders have concerns about separation between credit access businesses and third-party lenders, and would like to further study the issue before moving forward with a rule containing guidelines for separation. In the meantime, the agency intends to continue addressing violations of the statutory separation requirement through its authority to enforce Chapter 393.

Regarding adopted new §83.5004, the agency received three official written comments regarding the delayed implementation date. The first commenter requested that "any delayed implementation date for generating new records under this section be kept to an absolute minimum." The second commenter suggested that a delayed implementation of "at least 6 months" due to necessary software adjustments and employee training. The third commenter recommended "a nine month implementation period . . . to allow

CABs to reprogram IT systems and reorganize hard copy records."

As a result of the comments received, the agency believes it appropriate to divide the required records into two categories, one for immediate compliance, and the second with delayed implementation. First, certain records required by §83.5004 should already be maintained by licensees. The first category of records must be kept in accordance with the new rule as of the effective date, which is anticipated to be January 7, 2016. The records in the first category are: the consumer's transaction file described by paragraph (2); the agreements between the licensee and third-party lenders described by paragraph (3); the in-store fee schedule and notices described by paragraph (4); the website and online disclosures described by paragraph (5); the advertisements described by paragraph (6); the adverse action records described by paragraph (7); the registration and surety bond records described by paragraph (10); the official correspondence file described by paragraph (11); and the general business records described by paragraph (12).

Second, certain records required by §83.5004 may need to be created by licensees. This second category of records will have a delayed compliance date of October 1, 2016. The records in the second category are: the transaction register described by paragraph (1); the index of transfers, assignments, and sales described by paragraph (8); and the index of litigation, criminal charges, and repossessions described by paragraph (9).

Regarding the second category, the agency encourages early compliance, so that licensees begin keeping these records as soon as possible. Additionally, if a particular

licensee currently creates any records in the second category, the licensee should maintain those records as of the effective date. For example, if a licensee presently has an index of litigation, the licensee should maintain that litigation index in accordance with the rule beginning on the anticipated effective date of January 7, 2016.

In sum, records in the first category must be maintained beginning on the anticipated effective date of January 7, 2016. Records in the second category must be maintained beginning October 1, 2016.

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, new §83.5003 and §83.5004 are adopted under Texas Finance Code, §393.622(a)(3), which authorizes the commission to adopt rules regarding periodic examinations of credit access businesses by the OCCC, and under Texas Finance Code, §393.622(b), which authorizes the commission to adopt rules regarding the review of third-party lender agreements.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.1002. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393 have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter,

will have the following meanings, unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(4) Multiple payment auto title loan--
An auto title loan that is not a single
payment auto title loan.

(5) Multiple payment payday loan--
A payday loan that is not a single payment
payday loan.

(6) [(4)] OCCC--The Office of
Consumer Credit Commissioner of the State
of Texas.

(7) Single payment auto title loan--
An auto title loan for which the entire
principal balance, interest, and all fees
required under the terms of the transaction,
including any fees required to be paid to a
credit access business, are due in a single
payment.

(8) Single payment payday loan--A
payday loan for which the entire principal
balance, interest, and all fees required under
the terms of the transaction, including any
fees required to be paid to a credit access
business, are due in a single payment.

§83.3001. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 393, have the same meanings as defined in Chapter 393. The following words and terms, when used in this chapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

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(2) Principal party--An adult individual with a substantial relationship to the applicant by ownership of more than 10% of the applicant, or having control of the proposed credit access business of the applicant. The following individuals are principal parties:

(A) a proprietor holding a 100% ownership interest [~~proprietors, including spouses with community property interest~~];

(B) - (H) (No change.)

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) - (iii) (No change.)

(iv) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual [~~who owns and who is~~] responsible for operating the business. If

requested, the applicant must also disclose the names of the spouses of these individuals. [~~All community property interests must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.~~]

(II) - (VI) (No change.)

(B) - (E) (No change.)

(2) - (3) (No change.)

§83.3006. Updating Application and Contact Information. [~~Reportable Actions After Application.~~]

(a) Applicant's updates to license application information. Before a license application is approved, an applicant must report to the OCCC any [~~Any action, fact, or~~] information that would require a materially different answer than that given in the original license application and that relates to the qualifications for license [~~must be reported~~] within 10 calendar days after the person has knowledge of the [~~action, fact, or~~] information.

(b) Licensee's updates to license application information. A licensee must report to the OCCC any information that would require a different answer than that given in the original license application within 30 calendar days after the licensee has knowledge of the information, if the information relates to any of the following:

(1) the names of principal parties;

(2) the names of third-party lender organizations;

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(3) criminal history;

(4) actions by regulatory agencies; or

(5) court judgments.

(c) Contact information. Each applicant or licensee is responsible for ensuring that all contact information on file with the OCCC is current and correct, including all mailing addresses, all phone numbers, and all e-mail addresses. It is a best practice for licensees to regularly review contact information on file with the OCCC to ensure that it is current and correct.

§83.3010. Fees.

(a) - (b) (No change.)

(c) Fingerprint processing. An applicant must pay a fee to a party designated by the Texas Department of Public Safety for processing fingerprints. The Texas Department of Public Safety and the designated party determine the amount of the fee and whether it is refundable. [A nonrefundable fee as prescribed by the commissioner will be charged to recover the costs of investigating each principal party's fingerprint record.]

(d) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each license consisting of:

(A) (No change.)

(B) a volume fee based upon the volume of business that consists of an amount not to exceed \$0.03 per each \$1,000 advanced for license holders whose

operations occur within Texas Finance Code, Chapter 393 in accordance with the most recent annual report required by §83.5001 of this title (relating to Data Reporting Requirements) [~~quarterly report filing required by Texas Finance Code, §393.627~~].

(2) - (4) (No change.)

§83.4002 Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §393.613, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address [upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service].

§83.4003. Denial, Suspension, or Revocation Based on Criminal History.
{{This section has replaced former sections 83.4003 and 83.4004, both of which have been repealed.}}

(a) Criminal history record information. After an applicant submits a complete license application, including all required fingerprints, and pays the fees required by §83.3010 of this title (relating to Fees), the OCCC will investigate the applicant and its principal parties. The OCCC will obtain

criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation based on the applicant's fingerprint submission. The OCCC will continue to receive information on new criminal activity reported after the fingerprints have been initially processed.

(b) Disclosure of criminal history. The applicant must disclose all criminal history information required to file a complete application with the OCCC. Failure to provide any information required as part of the application or requested by the OCCC reflects negatively on the belief that the business will be operated lawfully and fairly. The OCCC may request additional criminal history information from the applicant, including the following:

(1) information about arrests, charges, indictments, and convictions of the applicant and its principal parties;

(2) reliable documents or testimony necessary to make a determination under subsection (c), including letters of recommendation from prosecution, law enforcement, and correctional authorities;

(3) proof that the applicant has maintained a record of steady employment, has supported the applicant's dependents, and has otherwise maintained a record of good conduct; and

(4) proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid.

(c) Crimes directly related to licensed occupation. The OCCC may deny a license application, or suspend or revoke a license, if the applicant or licensee has been convicted of an offense that directly relates

to the duties and responsibilities of a credit access business, as provided by Texas Occupations Code, §53.021(a)(1).

(1) Providing credit access business services involves or may involve making representations to consumers regarding the terms of the contract, receiving money from consumers, remitting money to third parties, maintaining accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, and collecting due amounts in a legal manner. Consequently, crimes involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the person, failure to file a governmental report or filing a false report, or the use or threat of force against another person are directly related to the duties and responsibilities of a licensee and may be grounds for denial, suspension, or revocation.

(2) In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.022:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

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(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee.

(3) In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a licensee, the OCCC will consider the following factors, as specified in Texas Occupations Code, §53.023:

(A) the extent and nature of the person's past criminal activity;

(B) the age of the person when the crime was committed;

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person before and after the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(F) evidence of the person's current circumstances relating to fitness to hold a license, which may include letters of recommendation from one or more of the following:

(i) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(ii) the sheriff or chief of police in the community where the person resides; and

(iii) other persons in contact with the convicted person.

(d) Crimes related to character and fitness. The OCCC may deny a license application if the OCCC does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a). In conducting its review of character and fitness, the OCCC will consider the criminal history of the applicant and its principal parties. If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2)-(3) of this section in its review of character and fitness.

(e) Revocation on imprisonment. A license will be revoked on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of

mandatory supervision, as provided by Texas Occupations Code, §53.021(b).

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42.12, §3g, or art. 62.001(6), as provided by Texas Occupations Code, §53.021(a)(3)-(4);

(3) errors or incomplete information in the license application;

(4) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §393.614(a)(3); and

(5) any other information warranting the belief that the business will not be operated lawfully and fairly, as provided by Texas Finance Code, §393.607(a) and §393.614(a).

§83.5003. Examinations.

(a) Examination authority. The OCCC may periodically examine each place of business of a licensee and inspect the licensee's transactions and records, including

books, accounts, papers, and correspondence, to the extent the transactions and records pertain to business regulated under Texas Finance Code, Chapter 393.

(b) Access to records. A licensee must allow the OCCC to examine the licensee's place of business and make a copy of an item that may be inspected under subsection (a) of this section.

(c) Third-party lender agreements. The OCCC's examination authority includes the authority to review all agreements between a licensee and any third-party lender with which the licensee contracts to provide services under Texas Finance Code, Chapter 393.

(d) Witness statements. In connection with an examination, the OCCC may obtain witness statements that pertain to business regulated under Texas Finance Code, Chapter 393. A witness statement must be signed and dated, and must include an acknowledgment that the statement may be introduced in an enforcement action in which the licensee is a party.

(e) Records statements. In connection with an examination, the OCCC may obtain statements regarding records maintained by the licensee that pertain to business regulated under Texas Finance Code, Chapter 393. A records statement must be signed and dated by a witness, and must include acknowledgments of the following:

(1) a statement of the witness's position and duties at the licensee;

(2) a statement that the witness is familiar with the manner in which records

are created and maintained by virtue of duties and responsibilities;

(3) the number of pages of attached records;

(4) a statement that the records are original records or exact duplicates of the original records;

(5) a statement that the records were made at or near the time of each act, event, condition, opinion, or diagnosis set forth;

(6) a statement the records were made by, or from information transmitted by, persons with knowledge of the matters set forth;

(7) a statement that the records were kept in the course of regularly conducted business activity;

(8) a statement that it is the regular practice of the business activity to make the records; and

(9) an acknowledgment that the statement and the accompanying records may be introduced in an enforcement action in which the licensee is a party.

§83.5004. Files and Records Required.

A licensee must maintain records for each transaction under Texas Finance Code, Chapter 393, and make those records available to the OCCC for examination. The records required by this section may be maintained by using a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of these types of systems, unless otherwise specified. All records must be prepared and

maintained in accordance with generally accepted accounting principles. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Transaction register. A licensee must maintain a transaction register, or be able to produce this information within a reasonable amount of time. Each record in the register must contain the transaction number, the date of the transaction, the last name of the consumer, the total fees payable to the licensee, the total of payments, and the type of transaction (single payment payday loan, single payment auto title loan, multiple payment payday loan, or multiple payment auto title loan). Each record in the transaction register must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(2) Consumer's transaction file. A licensee must maintain a paper or electronic transaction file for each individual transaction under Texas Finance Code, Chapter 393, or be able to produce this information within a reasonable amount of time. The transaction file must contain documents that show the licensee's compliance with applicable state and federal law, including Texas Finance Code, Chapter 393. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the transaction file if the electronic record can be accessed upon request.

(A) The transaction file must include the following documentation for

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each transaction under Texas Finance Code, Chapter 393:

(i) any agreement between the consumer and the licensee, including the contract described by Texas Finance Code, §393.201, with all provisions required by that section, as well as the notice of cancellation described by Texas Finance Code, §393.202;

(ii) any agreement between the consumer and the lender, including the promissory note;

(iii) documentation referencing which agreements between the licensee and a third-party lender apply to the transaction, including any guarantee or letter of credit issued by the licensee;

(iv) all legally required disclosures provided in connection with the transaction, including:

(I) the consumer disclosure required by Texas Finance Code, §393.223, and §83.6007 of this title (relating to Consumer Disclosures);

(II) the credit services organization disclosure required by Texas Finance Code, §393.105;

(III) any disclosures provided under the Truth in Lending Act, 15 U.S.C. §§1601-1667f, and Regulation Z, 12 C.F.R. Part 1026;

(IV) any privacy notice provided under the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809, and Regulation P, 12 C.F.R. Part 1016;

(V) any notice to cosigner provided under the Federal Trade Commission's Credit Practices Rule, 16 C.F.R. §444.3;

(v) the consumer's credit application and any other written or recorded information used in evaluating the application;

(vi) any document signed by a co-borrower, co-signor, or other guarantor in connection with the transaction;

(vii) any documentation of whether the consumer is a covered borrower under the Department of Defense's Military Lending Act Rule, 32 C.F.R. Part 232, including the identification of covered borrower described by 32 C.F.R. §232.5;

(viii) complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or purchased by the consumer in connection with the transaction;

(ix) complete documentation of all payments made by or to the licensee during the transaction and all payments made by or to the third-party lender at the inception of the transaction (including the amount of each payment, the source of each payment, and the recipient of each payment);

(x) any other documentation created or obtained by the licensee in connection with the transaction.

(B) The transaction file must include the following documentation if the licensee services or collects a loan in connection with a transaction under Texas Finance Code, Chapter 393, or if the

licensee otherwise obtains this documentation in the course of business;

(i) Consumer's account record. The licensee must maintain an account record containing at least the following information:

(I) loan number or another unique number identifying the transaction;

(II) loan schedule and terms itemized to show the number of installments and the due date and amount of each installment, including installments payable to the licensee;

(III) name, address, and telephone number of consumer;

(IV) names and addresses of co-borrowers, if any;

(V) principal balance;

(VI) total interest charges;

(VII) all fees paid to the licensee;

(VIII) amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(IX) individual payment entries for all payments described by subparagraph (A)(ix) of this paragraph, and any other payments made by the consumer during the transaction, itemized to show the date payment was received (dual postings are acceptable if date of posting is other than date of receipt), actual amounts received for

application to due amounts, and actual amounts paid for default, deferment, or other authorized charges;

(X) any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to consumers, with refund amounts itemized to show interest charges or other amounts refunded;

(XI) collection contact history, including a written or electronic record of each contact made by a licensee with the consumer or any other person and each contact made by the consumer with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(XII) corrective entries to the consumer's account record, if justified, including the reason and supporting documentation for each corrective entry.

(ii) Payday loan records. For a payday loan, the transaction file must include documentation relating to the personal check or authorization to debit a deposit account accepted in connection with the loan.

(iii) Auto title loan records. For an auto title loan, the transaction file must include all documentation relating to the attachment and perfection of a security interest in the motor vehicle, including any of the following documentation obtained by the licensee:

(I) the security agreement;

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(II) if obtained by the licensee or the third-party lender, the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(III) if executed by the licensee or the third-party lender, an application for certificate of title (Texas Department of Motor Vehicles Form 130-U for Texas vehicles);

(IV) if obtained by the licensee or the third-party lender, a title application receipt (Texas Department of Motor Vehicles Form VTR-500-RTS for Texas vehicles), or a similar document evidencing the filing of the application for certificate of title and payment of required fees and taxes.

(iv) Repossession records. The transaction file must include complete documentation of any repossession initiated by the licensee, including:

(I) any condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(II) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the consumer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(III) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and

Commerce Code, §9.610, the following documents:

(-a-) one of the following notices:

(-1-) a copy of the notification of disposition as sent to the consumer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(-2-) a copy of the waiver of the notice of intended disposition prescribed by subitem (-1-) of this item, as applicable, signed by the consumer and other obligors after default;

(-b-) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer-only auction, internet sale, or other type of private disposition;

(-c-) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(-d-) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(-e-) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the

consumer or other person entitled to the surplus;

(-f-) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency, if required by Texas Business and Commerce Code, §9.616;

(-g-) a copy of the waiver of the deficiency letter if the licensee elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(IV) for a vehicle disposed of using the strict foreclosure method permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(-a-) one of the two following notices:

(-1-) a copy of the proposal to accept collateral in full satisfaction of the obligation; or

(-2-) for a transaction where 60% or more of the principal balance has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the consumer and other obligors after default;

(-b-) for a transaction where the consumer rejects the offer under item (-a-)(-1-) or (-2-) of this subclause, a copy of the consumer's signed objection to retention of the collateral;

(-c-) copies of the records reflecting the total satisfaction of the obligation.

(v) Litigation records. The transaction file must include complete documentation of any litigation filed by a licensee against a consumer, or by a consumer against the licensee, including all pleadings, the terms of settlement (if a settlement was entered), documentation of any mediation or arbitration, the final judgment (if the court entered a final judgment), and records of all payments received after judgment, properly identified and applied. If the licensee maintains the complete documentation of litigation at a centralized location other than the licensed location or branch office, then the licensee's transaction file may include a written summary of the status of the litigation, rather than complete documentation of the litigation. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(vi) Criminal charge records. The transaction file must include complete documentation of any criminal charge or complaint filed by a licensee against a consumer, showing the licensee's compliance with Texas Finance Code, §393.201(c)(3). This must include any written evidence of criminal conduct, a written summary of any oral statement submitted to law enforcement, any police report, and any court records obtained by the licensee.

(vii) Claim records for insurance or ancillary products. The transaction file must include complete documentation of any claims or disbursement of money related to insurance or another ancillary product provided in connection with the transaction.

(viii) Transfer records. The transaction file must include transfer, assignment, or sale records for any loan transferred, assigned, or sold to or from another person.

(C) The transaction file and its contents must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later. However, this retention period does not apply to the credit services organization disclosure required by Texas Finance Code, §393.105, which must be kept for two years from the date on which it is provided to the consumer, as provided by Texas Finance Code, §393.106.

(3) Agreements between licensee and third-party lender. A licensee must maintain all documentation of its current agreements with third-party lenders, including copies of the agreement, any guarantees or letters of credit, and underwriting guidelines issued by the lender. The documentation must show the licensee's compliance with Texas Finance Code, §393.001(3). The licensee may maintain this documentation at a centralized location other than the licensed location or branch office if the agreements apply to multiple locations. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it. If an agreement terminates, documentation of the agreement must be maintained until the latest of:

(A) four years from the date of the last consumer transaction subject to the agreement;

(B) two years from the date of the final entry made on the consumer's account in the last consumer transaction subject to the agreement;

(C) one year from the date of termination of the agreement; or

(D) the OCCC's next examination of the licensee (if the documentation is maintained at a centralized location, this refers to the next examination of the centralized location).

(4) In-store fee schedule and notices. The in-store fee schedule and notices required by Texas Finance Code, §393.222(a), and §83.6003(a) of this title must be available for inspection by the OCCC in a conspicuous location visible to the general public. If a licensee amends the in-store fee schedule or notices, it must maintain documentation of the previous versions of the schedule or notices for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. The licensee may maintain the documentation of previous in-store fee schedules and notices at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(5) Website and online disclosures. If a licensee maintains a website, it must make the website available to the OCCC for inspection. The website must include a fee schedule to show the licensee's compliance

with §83.6003(b) of this title, and applicable consumer disclosures to show the licensee's compliance with §83.6007(f) of this title. If a licensee amends the website's fee schedule, consumer disclosures, or method of accessing the fee schedule or consumer disclosures, the licensee must maintain documentation of the previous version of the website to show compliance with §83.6003(b) of this title and §83.6007(f) of this title. This must include the home page, any pages used in accessing the fee schedule and disclosures, and copies of the previously used fee schedule and disclosures. The licensee must maintain this documentation for one year from the date of amendment or until the next examination by OCCC staff, whichever is later. This paragraph does not require a licensee to maintain previously used pages of the website that were not the home page or pages used in accessing the fee schedule and consumer disclosures. The licensee may maintain the documentation of previous versions of the website at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(6) Advertisements. A licensee must maintain advertising and solicitation records, including examples of all written and electronic communications soliciting transactions (including advertisements at the place of business, scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for one year from the date of use or until the next examination by OCCC

staff, whichever is later. If any language other than English is used in any advertising material, a true and correct translation must be maintained along with the advertising material. The licensee may maintain the documentation of advertising at a centralized location other than the licensed location or branch office. In this case, the documentation must be maintained for one year from the date of amendment or until the OCCC's next examination of the centralized location, whichever is later. However, upon the OCCC's request, the licensee must have the ability to promptly obtain or access copies of the complete documentation so that the OCCC can examine it.

(7) Adverse action records. Each licensee must maintain adverse action records for all applications relating to Texas Finance Code, Chapter 393 transactions. Adverse action records must be maintained according to the record retention requirements in Regulation B, 12 C.F.R. §1002.12(b). The current retention period is 25 months for consumer credit. These records include the loan application, any written or recorded information used in evaluating the application, the adverse action notice (if required), the notice of incompleteness (if applicable), and counteroffer notice (if applicable).

(8) Index of transfers, assignments, and sales. The licensee must maintain (or be able to produce within a reasonable period of time) an index of all loans transferred, assigned, or sold to or from another person, including a third-party lender, or to a different location of the licensee. Each record in the index must be retained for four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is

later. (For transfers from the licensee, the date of transfer is the date of the final entry.)

(9) Index of litigation, criminal charges, and repossessions. A licensee must maintain (or be able to produce within a reasonable period of time) an index of each litigation action and criminal charge filed by or against the licensee, as well as each repossession initiated by the licensee. The index must show the consumer's name, account number, and date of action. Each record in the index must be retained for a period of four years from the date of the transaction, or two years from the date of the final entry made on the consumer's account, whichever is later.

(10) Registration and surety bond records. A licensee must maintain documentation of its registration as a credit services organization with the Texas Secretary of State, including its registration statement and registration certificate, to show its compliance with Texas Finance Code, §393.101. A licensee must maintain complete documentation of any surety bond obtained by the licensee under Texas Finance Code, §393.401, and any surety bond required by the OCCC under Texas Finance Code, §393.605. If a registration or surety bond terminates, the licensee must maintain the documentation for one year after the date of termination or until the next examination by OCCC staff, whichever is later.

(11) Official correspondence file. A licensee must maintain an official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC (including quarterly and annual reports), examination reports issued by the OCCC, and notices of relocation described

by §83.3008 of this title (relating to Relocation of Licensed Office).

(12) General business records. A licensee must maintain any other business records showing its compliance with applicable law, including accounting records showing that the licensee maintains net assets required by Texas Finance Code, §393.611, records used to compile quarterly and annual reports, records of disbursement of funds between the licensee and third-party lenders, receipts, bank statements, and any master insurance policies.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 18, 2015.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner



Date: November 25, 2015

To: Office of Consumer Credit Commissioner

From: Consumer Service Alliance of Texas

Re: CSAT Comments to Proposed Rule Amendments from rule review of 7 TAC, Part 5, Chapter 83, Subchapter B regarding rules for Credit Access Businesses (Part 1: changes regarding definitions, license applications and fees; new sections regarding examination authority and record retention requirements)

These comments are provided by the Consumer Service Alliance of Texas ("CSAT") on the proposed rule amendments from rule review of 7 TAC, Part 5, Chapter 83, Subchapter B regarding rules for credit access businesses (Part 1: changes regarding definitions, license applications and fees; new sections regarding examination authority and record retention requirements).

CSAT appreciates the opportunity to participate in the rulemaking process and is available to answer any questions the Office of the Consumer Credit Commission ("OCCC") may have about these comments.

Information About CSAT

CSAT is a non-profit trade association that advocates for the protection of financial choice based on informed decision-making and personal responsibility for Texas consumers. CSAT represents the interests of consumers and credit access businesses ("CABs") in Texas.

CABs provide retail financial products and services to Texas consumers. From stores in neighborhoods across the state, hardworking Texans have access to small, short-term loans; auto-title loans; money orders; pre-paid telephone and debit cards; and other services to help them manage their finances.

One of the services CABs provide is securing an independent third-party lender for customers who need access to credit to meet their immediate financial needs. CABs do not directly provide loans to consumers.

CSAT's mission is to work cooperatively with industry, consumers, and government officials to help ensure Texans have access to short-term loans and other financial service products in compliance with the law.

CSAT Comments

The OCCC has proposed new rules regarding examination authority and recordkeeping requirements, including a list of documents CABs are required to maintain. The proposed amendments also include changes to definitions, license applications, fees, and reviews of criminal history of applicants.

83.1002(5), (7) and (8) Definitions

Proposed definitions define multiple and single payment loan types. The definitions should describe the type of credit product, not the mechanism by which a CAB is compensated.

Section 393.601(3) defines “deferred presentment transaction” as a credit transaction defined in Section 341.001. Section 341.001 defines a credit transaction between two parties --- a borrower and lender.

Section 393.601(5) defines “motor vehicle title loan” as a loan in which an unencumbered motor vehicle is given as security for the loan. A loan could be an agreement between a borrower and a lender.

Other sections in Chapter 393, Subchapter C, provide specific detail about the terms and conditions of an agreement between a consumer and A CAB where a CAB “obtains, or assists a consumer in obtaining” a loan --- but not about the loan itself.

In subsections (7) and (8), we recommend inserting “any” between “including” and “fees” in the following phrase: “fees required under the terms of the transaction, including any fees required to be paid to a credit access business”.

83.4002(2) Notice of Delinquency in Payment of the Annual Assessment Fee

A concern has been raised about the proposed email notice related to employee turnover in branches. We recommend email notice only be effective when sent to a master file address email. We would certainly have no objection to requiring a master file address email from companies with more than one location. Our concern is companies will submit email addresses for every licensed store location.

In subsection (2), we recommend the following insertion: “by email to the address on file with the OCCC as a master file address, if the licensee has provided a master file email address”.

83.5003(d) and (e) Examinations

Proposed subsection (d) provides the OCCC “may” obtain written statements from employees in connection with an examination. Proposed subsection (e) provides the OCCC “may” obtain statements regarding records maintained by the licensee in connection with an examination. Both statements can be introduced as evidence in an enforcement action. We seek clarification in the commentary to the final rule that both of the proposed subsections are permissive, and refusal to give a statement to confer with management and/or counsel will not be deemed a violation of the proposed rule.

83.5004(2)(B)(iii)(I) Files and Records Required

Vehicle condition reports are not a requirement under the Texas Business and Commerce Code. CABs should not be required to maintain copies of reports if they are prepared by third parties. We seek clarification in the commentary to the final rule.

83.5005(b) Separation Between Credit Access Business and Third-Party Lender

Most CAB transactions involve a two-step underwriting process. The CAB evaluates the borrower to determine whether to provide a credit enhancement in the form of a letter of credit in favor of the borrower's repayment of the loan or a guaranty of repayment. The third-party lender then employs distinct, separate underwriting criteria to determine whether to make the loan. We recommend a change to subsection (b) providing: "A licensee may not require the use of specific underwriting criteria by a lender when determining whether to make a loan to a consumer, but a licensee may apply its own underwriting criteria or criteria selected by the third-party lender".

Implementation Period

The proposed record keeping requirements, including the various registers, files and systems; are voluminous, comprehensive and extensive. Many companies retain all, or part, of the required records electronically. Reprogramming IT and manual record keeping systems will require substantial investments in staff time and resources. We recommend a nine month implementation period from the effective date of the proposed regulations to allow CABs to reprogram IT systems and reorganize hard copy records.

When the CAB licensing, supervision and enforcement laws were enacted by the Texas Legislature in May of 2011, the bills had a January 1, 2012 effective date. Regulations adopted later that year provided for a 90 day provisional period for license application approvals. Given time for training of examiners, supervision activities did not begin in earnest until approximately one year after the legislation was approved.

The proposed record keeping requirements are arguably more extensive than the initial requirements in 2011. A similar, yet more condensed, implementation schedule is justified.

For More Information

For more information about these comments by CSAT, please contact the following: Robert W. Norcross, Jr., Vianovo, LP, 2225 W. Southlake Blvd., Suite 423, Southlake, Texas 76092, telephone 817-491-7110, fax 817-719-9200, email REDACTED.

November 30, 2015

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, TX 78705

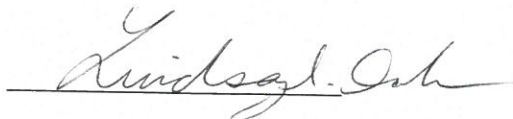
Re: CAB Rule Review (Part 1) Official Comments

Dear Ms. Hobbs,

Southwestern & Pacific Specialty Finance, Inc. d/b/a Check 'n Go (CNG), an affiliate of Axxcess Financial Services, Inc., has reviewed the proposed amendments to regulations 7 TAC, Part 5, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses. For Proposed Rule 83.5004 regarding recordkeeping requirements, CNG would have to conduct a review of its current procedures to determine whether they comply with the proposed rule, and make any technological or software adjustments where necessary. Because software adjustments take a considerable amount of time and IT resources, and employees would have to be trained on new procedures, CNG is requesting that the implementation of this rule be delayed at least 6 months from the effective date of the rule.

CNG appreciates the opportunity to provide feedback and asks that you take its comments into consideration.

Respectfully yours,



Lindsay Oak
Compliance Counsel
Axxcess Financial Services, Inc. (d/b/a Check 'n Go, affiliated with Southwestern & Pacific Specialty Finance)
7755 Montgomery Road, Suite 400
Cincinnati, OH 45236
REDACTED

From: Ann Baddour <REDACTED>
To: Laurie Hobbs <Laurie.Hobbs@occc.texas.gov>
Date: 11/30/2015 12:21 PM
Subject: Texas Appleseed Comments on Schedule B CAB rules posted in Texas Register
Attachments: Pulling Back the Curtain_0.pdf

Dear Ms. Hobbs,

Attached and below are additional comments to the Schedule B CAB rulemaking from Texas Appleseed, particularly in regard to the proposed language of §83.5005(a).

The attached study documents concerning practices among CABs that go against the letter and spirit of the law.

The attached study (*Pulling Back the Curtain: Shining a Light on Payday and Auto Title Loan Businesses in Texas)* found that:

· 22% of the third party lenders listed in 2012 CAB license applications had some form of overlapping ownership with a CAB and

· 67% of the instances of overlapping ownership between CABs and third-party lenders either showed the same individuals owning both a CAB and the affiliated third-party lender, or family members playing “mix and match” with different groupings owning different CABs and a third-party lenders, and setting up the lending relationship to provide the appearance of separateness, while keeping things all in the family (see pp. 22-25 of the attached study for specific examples).

The attached study provides substantial evidence documenting the need to further clarify the separation between a CAB and third-party lender or lenders in the proposed rule in *§83.5005(a)* in order to comply with the standard of true separation in the law and relevant letters and opinions. This separation is the key legal standard upon which the applicability of Texas usury laws to the CSO fees hinges.

§83.005(a) should be clarified and hold more tightly to the standard of separation in the law by adding the language: “There should be no common ownership, no common directors, no common officers or employees, nor any common ownership, officers, directors or employees with a family relationship.”

Please let me know if you have any additional questions. I appreciate the opportunity to comment on these very important rules.

Sincerely,

Ann Baddour

Ann Baddour

Director, Fair Financial Services Program

Texas Appleseed

1609 Shoal Creek Blvd, Suite 201

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PULLING BACK THE CURTAIN

SHINING A LIGHT ON PAYDAY AND AUTO TITLE LOAN
BUSINESSES IN TEXAS

White Paper

Ann Baddour, *Director, Fair Financial Services Project*

Marett Hanes, *Data Analyst Intern*

Deborah Fowler, *Executive Director*

Texas Appleseed

October 16, 2015

Texas Appleseed's Mission

Texas Appleseed promotes social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult, systemic problems.



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Acknowledgements

We are very grateful to our team of staff and interns for their significant contributions to this report, including former Texas Appleseed Staff Attorney, Brett Merfish, Pro Bono and New Projects Director, Gabriella McDonald, Deputy Director, Brennan Griffin, and Research Intern, Nabil Abbyad.

We are also particularly grateful to our board member Jim George, who served as lead pro bono counsel for Texas Appleseed in the open records litigation.

Texas Appleseed's Fair Financial Services Project is generously supported by the Consumer Federation of America, Dallas Women's Foundation, Harold Simmons Foundation, and the Meadows Foundation. The opinions expressed in this report are solely those of Texas Appleseed.

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Executive Summary

Payday and auto title loan businesses have been a source of significant policy debate in Texas over the past two decades. These businesses have been the target of scrutiny because of their very high rate charges, often well above rates permitted under state consumer lending laws, and a loan structure that holds many borrowers in debt far beyond the typical two-week or one-month loan term.¹

In 2005, payday and auto title loan businesses turned in their consumer lending licenses to become Credit Services Organizations (CSOs), operating essentially as loan brokers, required only to register with the Texas Secretary of State. They moved to this model of operation, partnering with unlicensed third-party lenders to make the loans, as a means to evade state fee and interest rate caps for licensed consumer lenders.² A 2012 change in state law made available, for the first time in nearly a decade, information about the ownership of these businesses and the third-party lenders that capitalize the high-cost loans. The 2012 law created a licensing requirement under the CSO Act, with a new designation for payday and auto title loan businesses, called credit access businesses (CABs).

In December of 2014, after two years of open records litigation, Texas Appleseed obtained license applications for payday and auto title loan businesses operating under the CAB license that include third-party lender information. This report is a presentation of the open records CAB licensee information supplemented by public ownership information obtained, through the Texas Comptroller's Office. The data presented in this study point to two major conclusions:

1. The current third-party lender market undermines true competition.

Key Findings:

- **Eighty-six percent of CABs work with only one third-party lender.** In some cases, loyalty to a specific third-party lender is due to a shared interest or relationship between the third-party lender and the CAB.
- **The top five third-party lenders in Texas (by number of licensed locations served) served 77% of all licensed CAB locations,** despite making up only 4% of all lenders. The top third-party lender, NCP Finance LP, served 38% of all Texas licensed locations.
- **Twenty-five of 135 third-party lenders, or 19% percent, have overlapping ownership with another third-party lender,** indicating that, while there is an appearance of competition, there is significant consolidation in ownership among third-party lenders.

¹ Bills both to enable and reform high-cost payday and auto title lending have been introduced in the Texas Legislature since the 1990s. In recent sessions, particularly 2011 and 2013, there was significant debate over the need for reform. Some basic licensing, disclosure and data collection measures passed in 2011. No measures have passed to date that address the high-cost or structural problems with the loans offered under the CSO Act.

² In Texas, consumer lending has long been governed by the Texas Finance Code, Chapter 342, which includes rate and fee caps for consumer loans as well as standards for payday loans, called "deferred presentment transactions."

2. The complex web of ownership of credit access businesses and third-party lenders hinders transparency and competition, and calls to question compliance with the law.

Key Findings:

- **Thirty-one percent of CABs appear to have some shared interest with one or more other CABs**, which generally involves ownership by the same individual or multiple individuals, but may also involve a complex web of ownership involving multiple CABs and individuals.
- **Of the 135 third-party lenders listed in 2012 CAB license applications, 22% have some form of overlapping ownership with a CAB.**
- **In 67% of the instances of overlapping ownership between CABs and third-party lenders**, either the same individual owns both a CAB and a third-party lender, or an individual owns a CAB and his or her family members are listed as owners or officers of a third-party lender.

In 2006, the Texas Attorney General issued a letter assessing the legality of the use of the CSO Act by payday and auto title loan businesses to arrange high-cost loans. The letter states in its conclusion:

... theoretically, if the CSO and the lender are truly independent actors, there would be nothing patently illegal about the model. Determining the true relationship between a CSO and a lender would be a fact-intensive endeavor. Any discussion of whether the use of this model is the best public policy choice for the State of Texas is one that must be addressed by the legislature and has not been explored by this office.³

This study is a “fact-intensive endeavor” and sheds important light on the relationships that exist between CABs (licensed under the CSO statute) and their third-party lenders. This study is limited by information

available in the public sphere. Nonetheless, exposing available information about the ownership and the source of capital for these high-cost loan businesses offers new information to assess competition in the market, compliance with the letter and spirit of the law, and whether the current legal structure is good public policy for Texas.

The findings of this study point to three important policy recommendations:

1. The Texas Legislature should level the playing field for business and consumer alike by requiring that all consumer loan businesses comply with the same rate and fee structures currently established by statute and administrative rules under Title 4 of the Texas Finance Code;
2. A deeper study should be conducted on the source of capital that drives the third-party lender model, as the results of the current study point to a concerning concentration of capital that undermines market competition and transparency for consumers; and
3. Texas needs clear and enforceable standards to ensure that CSOs do not evade the requirement that they arrange credit “by others.” Standards should prohibit any overlap, in ownership, officers or employees, between CABs and the third-party lenders that service them. Such prohibited overlap must include family relationships among the different owners, as well as business partnerships, where the same group of individuals own CABs and third-party lenders, all of which evade the spirit of the law.

Texas families need access to fair and responsible consumer loans. Fair consumer lending markets are key to successful families and local economies. If the CSO/CAB lending market is allowed to persist unchecked, it will continue to undermine competition and transparency in the Texas market and hinder a fair playing field for consumer lending—for borrowers and lenders alike.

³ Letter to Texas Consumer Credit Commissioner Leslie Pettijohn from Barry McBee, First Assistant Attorney General (January 12, 2006) (emphasis added).

PART 1

Introduction

A. Background

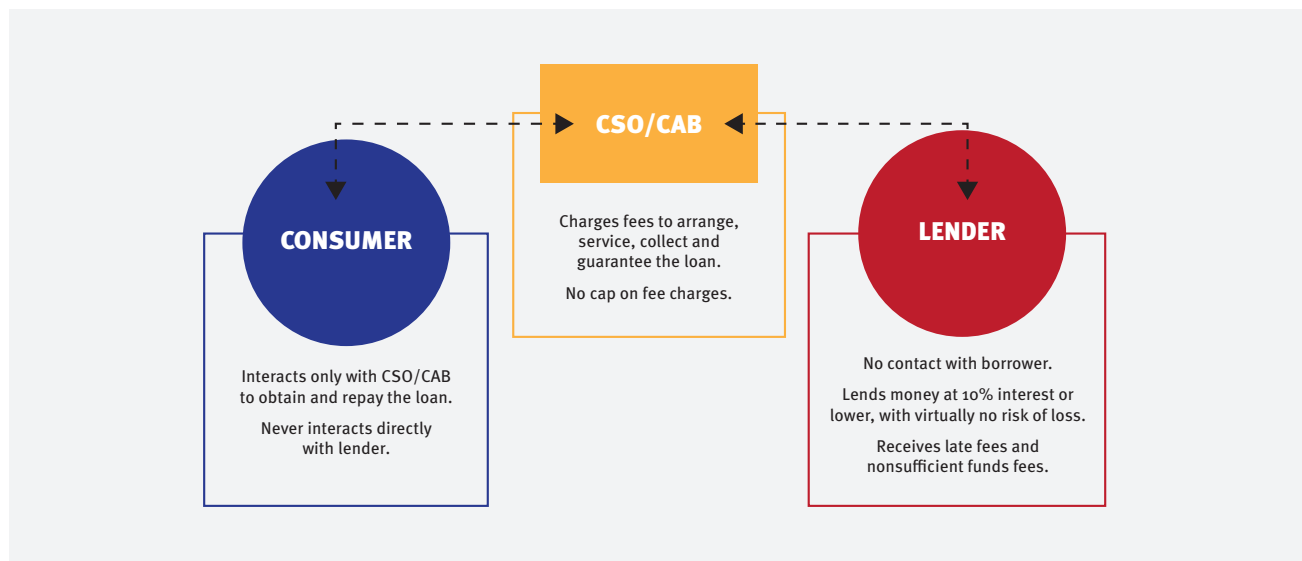
Payday and auto title lending is a \$5.8 billion industry in Texas, with over 70% of the volume generated by high fees and refinances.⁴ On average, annual percentage rates for payday loans range between 457% and 522% for a 19-152 day loan and auto title loans range from 243%-289% APR for a 30-191 day loan.⁵ The Texas Constitution caps rates at 10% interest⁶ and Title 4 of the Texas Finance Code allows significantly higher rates for consumer loans, but these rates are still far below the typical rates for payday and auto title loans in the Texas market.⁷

In order to avoid complying with established rate and fee caps for consumer loans, payday and auto title loan businesses operate outside of Texas' consumer lending

laws by serving as "loan arrangers" under the Texas Credit Services Organization Act, arranging loans through third-party lenders who lend at rates of 10% interest or less, in compliance with the state constitutional usury cap.

The CSO Act was first adopted in 1987 as a consumer protection against "fly by night" credit repair businesses.⁹ However, starting in 2005, it became the primary means of operation for payday and auto title loan businesses in Texas, bolstered by a 5th Circuit Court decision (*Lovick v. Ritemoney*) that found that usury limits in state law do not apply to CSO fees unless the fees are shared with the lender.¹⁰ The CSO lending model is a three party model, where the consumer obtains a loan from a third-party

Lending Business Model for Credit Services Organizations/Credit Access Businesses⁸



⁴ Texas Appleseed analysis of the Texas Office of Consumer Credit Commissioner Credit Access Business Annual Data, CY 2014 (June 23, 2015).

⁵ Texas Appleseed analysis of the Texas Office of Consumer Credit Commissioner Credit Access Business Quarterly Reports, Q1-Q4 2014 (April 16, 2015).

⁶ Tex. Const., Art. XVI, § 11.

⁷ Tex. Fin. Code § 342. The highest rate structure under § 342 allows a 10% administrative fee charge up to \$100 plus a \$4 per \$100 per month charge for the period that a loan is outstanding.

⁸ A credit access business (CAB) is a designation created as part of the 2011 law to license payday and auto title loan businesses operating under the Credit Service Organization Act.

“ I sense that something strange may be going on here...When the broker is getting 90% of the profit on a transaction, it is not unreasonable to think the lender is somehow being benefited; perhaps it is in effect, receiving a usurious rate of interest from whatever arrangement it has with the broker. ”

—Judge Jolly, U.S. 5th Circuit Court of Appeals
Dissenting opinion in *Lovick v. Ritemoney*

lender through the CSO as an intermediary. The CSO guarantees the loan, leaving the lender with essentially no risk. In the event of a default, the CSO takes ownership of the loan and engages in collections. The CSO also collects payments and services the loan. While lender interest is capped at 10%, avoiding licensing under state law, CSO fees are uncapped, which is why these loans often have annual percentage rates at 500% and higher.

From 2005 to 2012, little was known about these businesses in Texas. They had to post a small bond—\$10,000—and register with the Texas Secretary of State. Little to no information was known about ownership or relationships between CSOs and the third-party lenders offering loans to CSO customers, even though the information is essential to determine if the loans violate state usury law, per the *Lovick* decision and the plain language of the CSO Act.¹¹

Without access to ownership and third-party lender

information, it was also difficult to assess market competition and transparency in this high-cost credit market space. The third-party lender sets the underwriting criteria for the loans.¹² If multiple CABs and third-party lenders have the same or overlapping ownership, or if the market is dominated by only a few third-party lenders, it calls to question whether meaningful competition and transparency exist in this market space.

Starting in January of 2012, after the passage of HB 2594 in 2011 (82nd Regular Session), CSOs arranging payday and auto title loans were required to be licensed by the Texas Consumer Credit Commissioner as credit access businesses (CABs), a subgrouping created within the CSO Act. Part of the licensing requirement includes disclosure of the ownership of the business and the third-party lenders with which it works to arrange extensions of consumer credit.¹³

B. CAB and Third-Party Lender Data—A Two-Year Ordeal to Get a Glimpse Behind the Corporate Curtain

Texas Appleseed filed two separate open records requests with the Texas Office of Consumer Credit Commissioner, on October 25, 2012 and November 7, 2012, to obtain CAB ownership and third-party lender information. The CAB ownership data from the license applications was provided,

but the third-party lender data request was referred by the agency to the Office of the Texas Attorney General to obtain an open records ruling regarding disclosure of the third-party lender data.

⁹ According to a memorandum produced by the Texas Office of Consumer Credit Commissioner in February of 2011, “The legislature intended [the CSO Act] to reduce certain abuses by credit repair clinics. In particular, the bill’s author hoped that with a bond requirement, “fly by night” clinics would be less able to make misleading promises of credit repair, and less able to charge exorbitant fees for services that are available for free or at low cost We did not find any indication that the legislature intended to preempt usury laws or overrule case law concerning loan broker fees.” Memorandum, From: Matt Nance, To: Leslie Pettijohn & Sealy Hutchings, Re: Legislative History of Credit Services Organization Act (February 9, 2011).

¹⁰ See *Lovick v. Ritemoney, Ltd.*, 378 F.3d 433 (5th Cir. 2004). With regard to CSO fees, the decision states, “The Texas Legislature has not restricted the amount of a CSO service fee in proportion to the services provided; we cannot substitute our judgment.” *Id.* at 443. With regard to attributing the CSO fees to interest for usury purposes, the decision states, “Under [the Credit Services Organizations Act], read in conjunction with the usury statutes, brokerage fees shared with the lender are interest for purposes of determining usury.” *Id.* at 444.

¹¹ Tex. Fin. Code § 393.001 states that a CSO can only provide specified services, “with respect to the extension of consumer credit by others.” (Emphasis added.)

¹² Sealy Hutchings & Matthew J. Nance, *Credit Access Businesses: The Regulation of Payday and Title Loans in Texas*, 66 Consumer Fin. L.Q. Rep. 76, 80 (2012).

¹³ Tex. Fin. Code § 393.604 (3) & (4).

On January 18, 2013, the open records ruling was issued approving release of the data, with a few exceptions that were deemed personal or proprietary information.¹⁴ On February 13, 2013, the Consumer Services Alliance of Texas, a trade association representing CABs, and Cash Zone, dba Cash Biz and Cash Kingdom, filed separate lawsuits against the Texas Attorney General, challenging the open records ruling, in an attempt to prevent release

of the information.¹⁵ Texas Appleseed intervened in both lawsuits in March of 2013. More than two years after the original date of the open records request, there was a joint notice of nonsuit—all parties agreed to drop the suit—and the requested data was released by the Office of Consumer Credit Commissioner on December 17, 2014. This data offers an important snapshot of the operations of payday and auto title businesses in Texas.

C. Data Overview and Methodology

This study is based on data obtained through open records requests for information regarding licensed Credit Access Businesses (CABs) and their third-party lenders, submitted to the Texas Office of Consumer Credit Commissioner (OCCC) in 2012. A spreadsheet was created from this data, including ownership and officer information obtained from the Texas Comptroller of Public Accounts. After this information was compiled for the 217 licensed CABs included in the 2012 data, the process of looking up owner and officer information was repeated for the third-party lenders included in the data from the OCCC.¹⁶

Due to the two-year delay between obtaining the data from the OCCC and looking up ownership and officer information on the Texas Comptroller of Public Accounts website, some CABs and/or third-party lenders that were included in the original data are no longer registered as a taxable entity with the Texas Comptroller of Public Accounts. This was the case for 9 CABs, or 4% of licensed 2012 CABs, and 30 third-party lenders, or 22% of third-party lenders included in the data.¹⁷

Additionally, there are other instances where owner and officer information is unavailable or incomplete. There are 13 individuals or couples, or 6% of CABs listed as CAB companies and 17 individuals, or 13% of third-party lenders, listed as third-party lenders in the OCCC data. These listings do not return any results on the Texas Comptroller of Public Accounts website.¹⁸ Forty-three, or 20% of CABs, and 22, or 16% of third-party lenders, had incomplete filings that did not contain full owner or officer information on file on the comptroller website, and the ownership of these companies is unclear as a result.¹⁹ Furthermore, there are six third-party lenders, or 4% of reported lenders, where results were returned for a company with a slightly different name, and it is unclear whether or not this information pertains to the third-party lender reported in the data.²⁰ While some information may not be complete for CABs or third-party lenders, all of the information on the Texas Comptroller of Public Accounts website is up to date, so the following data analysis is not affected by the two-year delay in receiving the open records request from the OCCC.

¹⁴ The Attorney General of Texas, Opinion No. OR2013-01094 (Jan. 18, 2013), available at <https://www.texasattorneygeneral.gov/opinions/openrecords/5oabbott/orl/2013/pdf/or201301094.pdf>.

¹⁵ See *Cash Zone v. Abbott*, No. D-1-GN-13-000385 (201st Dist. Ct., Travis Cnty. filed Feb. 13, 2013); *Consumer Servs. Alliance of Tex. v. Abbott*, No. D-1-GN-13-000382 (201st Dist. Ct., Travis Cnty. filed Feb. 13, 2013).

¹⁶ Open Records Request from the Texas Office of Consumer Credit Commissioner. (2012). Received November, 2012 from the Texas Office of Consumer Credit Commissioner.

¹⁷ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

¹⁸ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

¹⁹ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

²⁰ *Id.*

PART 2

The Current Third-Party Lender Market Undermines True Competition

A. CABs Do Not Help Borrowers Find the Best Deal—Majority Work with Just One Lender

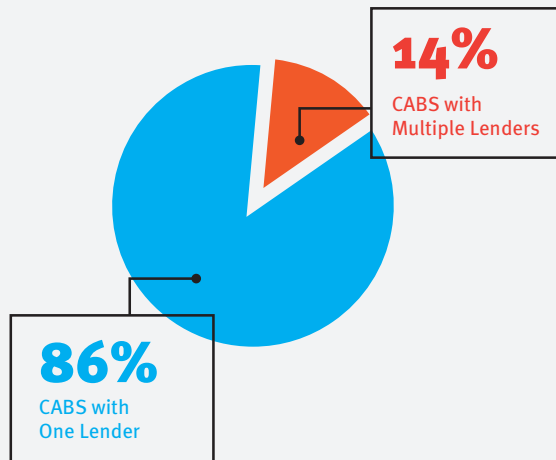
CABs are licensed under Title 5 of the Texas Finance Code, entitled “The Protection of Consumers of Financial Services.” Yet, the business model appears to work counter to consumers’ best interests, funneling borrowers into high-cost credit transactions, rather than allowing them to benefit from market competition to find the best deal. CABs play the role of loan broker in payday and auto title loan transactions in Texas, but most work with just one lender.

Based on the 2012 license application data, 86% of CABs reported working with just one third-party lender.²¹

Among CABs with multiple lenders, most listed having two third-party lenders. Only four CABs were listed as having more than two third-party lenders. In some cases, this loyalty to a specific third-party lender is due to a shared interest or relationship between that third-party lender and the CAB.²²

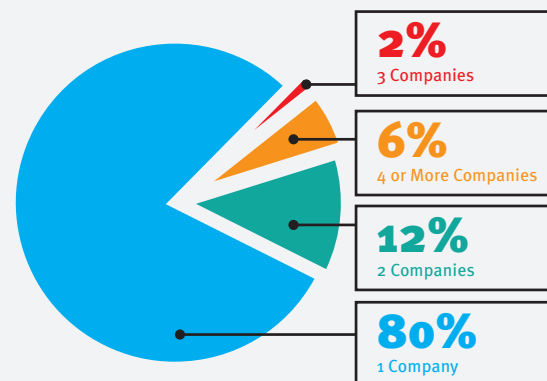
The majority of third-party lenders only serve one CAB, which indicates that relationships between CABs and their respective third-party lenders may be more about loyalty than fostering competition to benefit consumers.

Percent of CABs Served by One Third-Party Lender, 2012



Source: Texas Appleseed Analysis of Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

Percent of Third-Party Lenders by Number of CAB Companies Served, 2012



Source: Texas Appleseed Analysis of Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

²¹ Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

²² Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

Just as CABs tend to be served by only one third-party lender, most third-party lenders only serve one CAB company, rather than multiple companies. Of the 135 third-party lending companies, 80% served only one CAB, although the lender may serve multiple licensed locations affiliated with that company.²³ Lenders serving four or more CAB companies only made up 6% of the

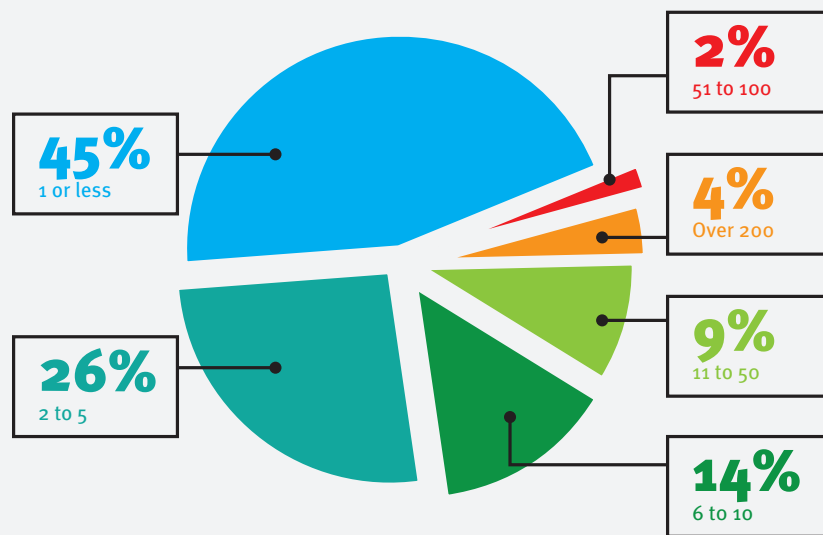
total number of third-party lenders.²⁴ This finding indicates that most third-party lenders are likely to be smaller companies that have an exclusive partnership with the CAB they serve. In some cases, the exclusive partnership is attributed to shared interests between the companies. Part 3 of this study examines shared interests in greater detail.

B. Market Dominated by Handful of Third-Party Lenders

According to the data provided by the Texas Office of Consumer Credit Commissioner, in 2012 there were 217 licensed CABs, with 3,272 licensed locations throughout Texas, and 135 third-party lenders serving these CABs.²⁵ Examining the number of licensed locations served by each third-party lender sheds light on the total market

share of the different third-party lenders. Most third-party lenders serve a small number of licensed CAB locations, with 45% serving one location or less (in the case of online lenders), and 26% serving two to five licensed locations.²⁶ Just 4% of lenders serve over 200 licensed locations each, but these lenders dominate the market.²⁷

Percent of Third-Party Lenders Serving Licensed CAB Locations
Grouped By Number of Locations Served, 2012



Source: Texas Appleseed Analysis of Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

²³ Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014 from the Texas Office of Consumer Credit Commissioner.

²⁴ *Id.*

²⁵ Open Records Request for CAB licensees and provisional licensees from the Texas Office of Consumer Credit Commissioner (Apr. 2012).

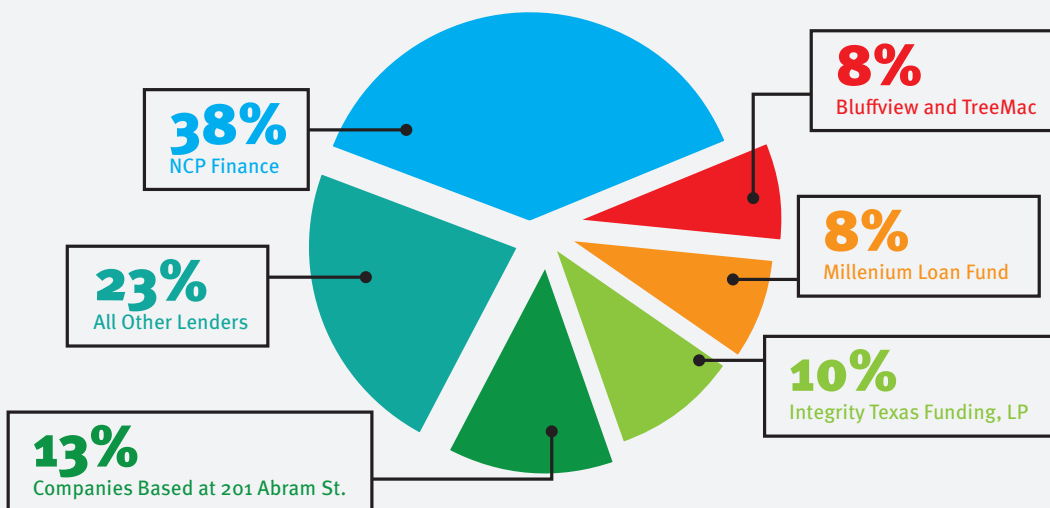
²⁶ *Id.*

²⁷ *Id.* (Red Point Financial Group and JBC Funding are excluded from this calculation because information regarding the locations each lender serves was missing from the documents. Both of these lenders serve Cash America Financial Services locations. If either of these companies serve all of Cash America's 258 licensed locations, these third-party lenders would surpass Bluffview and TreeMac, which are currently listed among the top five lenders in this report.).

The top five lenders in Texas (by number of licensed locations served) served 77% of all licensed CAB locations in Texas, despite making up only 4% of all third-party lenders.²⁸ The number of licensed locations served by the top five lenders range from 252 to 1,237 licensed locations:²⁹

- NCP Finance LP (“NCP”): 1,237 licensed locations, 38% of total licensed locations in Texas;³⁰
- Companies based at 201 E. Abram Street, Arlington, Texas, with the same ownership: 434 licensed locations, 13% of total licensed locations in Texas;³¹
- Integrity Texas Funding LP (“Integrity Texas”): 343 licensed locations, 10% of total licensed locations in Texas;
- Millennium Loan Fund: 265 licensed locations, 8% of total licensed locations in Texas; and
- Bluffview Funding Group, LLC (“Bluffview”) and TreeMac Funding Group, LLC (“TreeMac”): 252 licensed locations, 8% of total licensed locations in Texas.³²

**Percentage of Licensed Locations Served
by Top Five Third-Party Lenders, 2012**



Source: Texas Appleseed Analysis of Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

²⁸ *Id.*

²⁹ *Id.*

³⁰ NCP and Integrity Texas both list Steven Camp as a registered agent and may be connected. However, no ownership information is available, and these companies are listed at different addresses. NCP is listed as being in Dayton, Ohio, while Integrity Texas is listed as being in Greenville, South Carolina. Steven Camp is an attorney located in Dallas, Texas. It is also of note that there are other ACE Credit Access locations in cities served by NCP that were not listed in the third-party lender organization reporting data from the OCCC. It is possible that NCP may serve these locations, up to a potential total of 441 locations.

³¹ DSI Lending Resources, ISF Texas LLC, L&G Finance Inc., LGM Finance, S&G Finance Inc., SGS Credit Services, SGS Finance Inc., Sundance Finance LLC, and Texas Loan Corporation are owned by Eugene McKenzie and David King.

³² Dona and Lesley McArron own Bluffview and Scott McArron owns TreeMac. Scott McArron is also listed as an officer of Bluffview. Both companies list their addresses as 8340 Meadow Rd., Suite 244, Dallas, TX 75231. Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

Five of the 17 CAB companies served by NCP are particularly large, such as ACE Credit Access, LLC (516 total locations, 320 served by NCP), ACSO of Texas, LP (238 licensed locations),³³ Cash America Financial Services, Inc. (258 licensed locations),³⁴ Southwestern & Pacific Specialty Finance, Inc. (231 licensed locations), and TitleMax of Texas, Inc. (133 licensed locations). NCP and another

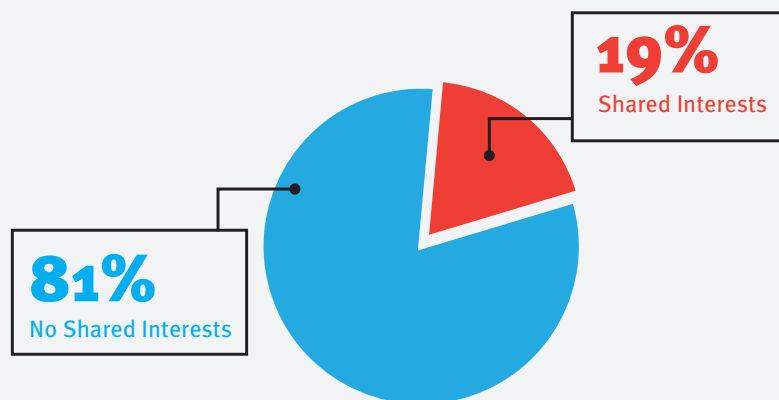
major third-party lender, Integrity Texas (which serves 343 licensed locations), have the same registered agent.³⁵ However, the companies do not have matching addresses, and no ownership information is on file for either, so they are listed separately in this chart.³⁶ If these two companies are in fact affiliated, they would collectively serve 48% of all licensed locations in Texas.³⁷

C. Overlapping Ownership Among Third-party Lenders

Some third-party lenders appear to have overlapping ownership with other third-party lenders, meaning that these lenders may be owned by the same individuals, by relatives, or by business partners who share an interest

in another company together. Twenty-five of the 135 third-party lenders, or 19% percent have overlapping ownership with another third-party lender.³⁸

Percent of Third-Party Lenders with Overlapping Ownership, 2012



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

³³ Cash America Financial Services is also served by two other third-party lenders, JBC Funding LLC and Red Point Financial Group. However, the data received from the OCCC did not include an attached list detailing which locations are served by these third-party lenders. If either of these companies serve all of Cash America's 258

³⁴ Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

³⁵ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015) (Steven Camp with Gardere Wynne Sewell LLP, is listed as the registered agent for both entities.).

³⁶ *Id.* (NCP lists its address as 100 E. Third Street, 5th Floor in Dayton, Ohio, while Integrity Texas lists its address as 84 Villa Road, Greenville, South Carolina. No owner or officer information is available for either of these companies. Consequently, it is unclear whether or not they share the same ownership.).

³⁷ Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014, from the Texas Office of Consumer Credit Commissioner.

³⁸ Thirteen of these twenty-five companies have owner and officer data showing that they have direct overlapping ownership. The remaining twelve have the same registered agent as another third-party lender, while no owner or officer information is available. It is possible that having a matching registered agent does not constitute overlapping ownership between these third-party lenders. Ten of these companies have matching addresses at 110 Cypress Station Dr., Suite 111, Houston, Texas 77090. The remaining two companies are NCP and Integrity Texas, both of which list Steven Camp as their registered agent. Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

Companies Based at 201 Abram Street, Arlington, Texas

Nine third-party lenders share the same Arlington address and are owned by the same two individuals, according to public records:

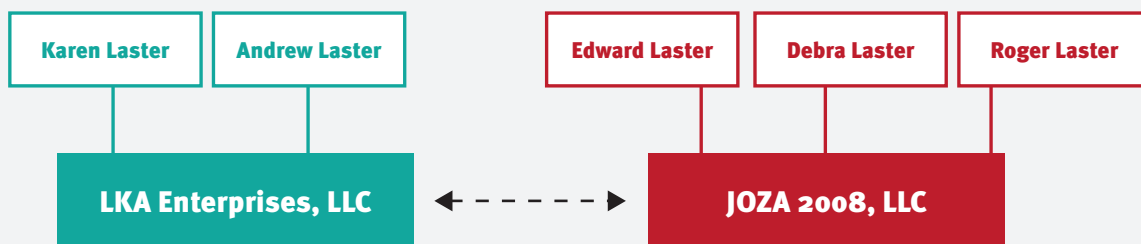
- DSI Lending Resources;
- ISF Texas, LLC;
- L&G Finance, Inc.;
- LGM Finance;
- S&G Finance, Inc.;
- SGS Credit Services;
- SGS Finance, Inc.;
- Sundance Finance, LLC; and
- Texas Loan Corporation.

Eugene McKenzie and David King are listed as jointly owning eight third-party lending companies, with McKenzie listed as the registered agent and director of each, and King listed as director and controller.³⁹ All of these companies have addresses listed as 201 E. Abram St. Suite 120, in Arlington, Texas.⁴⁰ An additional company, S&G Finance, Inc., is listed at this address, but no ownership information is available for this company.⁴¹ However, due to the matching address, this lender is included with the eight others and is assumed to belong to McKenzie and King as well.

LKA Enterprise, LLC and JOZA 2008, LLC: All in the Family?

LKA Enterprises, LLC (“LKA”) and JOZA 2008, LLC (“JOZA”) are connected through what appears to be a family relationship.⁴² Based on publicly available documents, there is no common ownership between these two companies. LKA is owned by Karen and Andrew Lasater, while JOZA is owned by Edward, Roger, and Debra Lasater.

LKA Enterprise, LLC and JOZA 2008, LLC: Ownership Connections



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

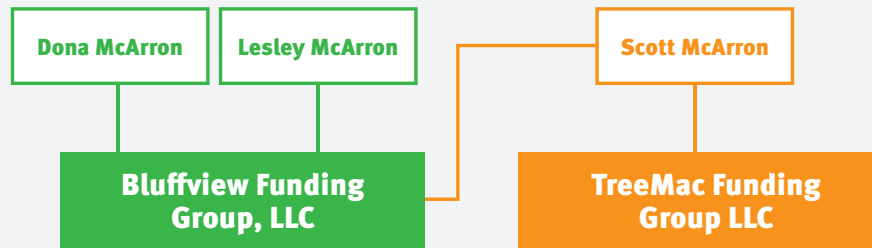
³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Open Records Request from the Texas Office of Consumer Credit Commissioner (2012). Request submitted on October 25, 2012. Data received December 17, 2014 from the Texas Office of Consumer Credit Commissioner.

⁴² Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

Bluffview and TreeMac: Ownership Connections



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

The ownership of these companies is likely structured in this way to enable these third-party lenders to serve CABs that are owned by other family members, but not the same individuals. This structure will be discussed in further detail in a later section.⁴³

Bluffview Funding Group, LLC and TreeMac Funding Group, LLC

Bluffview and TreeMac are both owned by members of the McArron Family.⁴⁴ Bluffview is owned by Dona and Lesley McArron, and Scott McArron is listed as an officer of this company. Scott McArron also owns TreeMac. These lenders are also linked by a shared address, 8340 Meadow Rd. Suite 244, Dallas, TX 75231.⁴⁵ Bluffview is one of five lenders serving ACE Credit Access, LLC, and TreeMac is the sole lender to Cottonwood Financial.⁴⁶

KRC Management Company

The third-party lenders associated with KRC Management Company, LLC, are as follows:

- Cactus Lending Group, LP;
- DDB Investment Company, LP;
- Imperial Lending Group, LP;
- Preferred Lending Group, LP;
- Progressive Lending Group, LP;
- Qualified Lending Group, LP;
- Source Lending Group, LP;
- Texas Gulf Coast Capital, LP;
- Texas Investors Choice, LP; and
- United Texas Investors, LP.

⁴³ The structure of LKA and JOZA is likely set up in this way to allow these Lasater-owned third-party lenders to lend to Lasater-owned CABs without lending directly to a CAB with overlapping ownership. This structure is explained further on page 19 of this report.

⁴⁴ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

⁴⁵ Id.

⁴⁶ Cottonwood Financial is owned by Trevor Ahlberg, who was a high school classmate of Scott McArron at St. Mark's School of Texas. They both graduated in 1986. TreeMac does not serve any CAB companies other than Cottonwood Financial. St. Mark's School of Texas, 2013-2014 Annual Report: Alumni Giving by Class (2014), available at <http://annualreport.smtexas.org/Page/Gift-Report/Alumni-Giving-by-Class/1980-1989> (last visited June 1, 2015).

These third-party lenders are connected to one another by way of the entity, KRC Management Company, LLC. Most of their company names include “c/o KRC Management” when listed as part of a CAB’s third-party lender information, with the exception of Cactus Lending Group, LP.⁴⁷ These companies are associated with multiple addresses, however, all except Cactus Lending Group have at least one address listed as 2040 N. Loop 336 W, Suite 101 in Madisonville, Texas. Other addresses that are listed multiple times include P.O. Box 1657 and 100 W. Main St., both in Madisonville.⁴⁸

All of these companies list KRC Management Company, LLC as their registered agent, but only Cactus Lending Group has ownership and officer information on file.⁴⁹ Although the connection between these third-party lenders is strong, it is not possible to know the full complexity of the connection between these lenders without ownership or membership information for the remaining nine lenders.

Although the CSO model is structured in a way that is intended to promote competition among a variety of third-party lenders, in practice, this does not seem to be the case. **While, on the outside, it appears that the third-party lender market is robust with competition, behind the corporate veil, there seems to be significant concentration in the capital sources for payday and auto title lending businesses in Texas—through overlapping ownership among third-party lenders and the market domination of a few large players.**

⁴⁷ Open Records Request from the Texas Office of Consumer Credit Commissioner. (2012). Request submitted on October 25, 2012. Data received December 17, 2014 from the Texas Office of Consumer Credit Commissioner.

⁴⁸ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

⁴⁹ *Id.* (While owner and officer information is generally not available for the third-party lenders associated with KRC Management, both Clinton Carroll and Krystal Carroll are listed as Members for Cactus Lending Group.).

PART 3

Transparency and Competition Hindered by Complex Web of Ownership of CABs and Third-Party Lenders

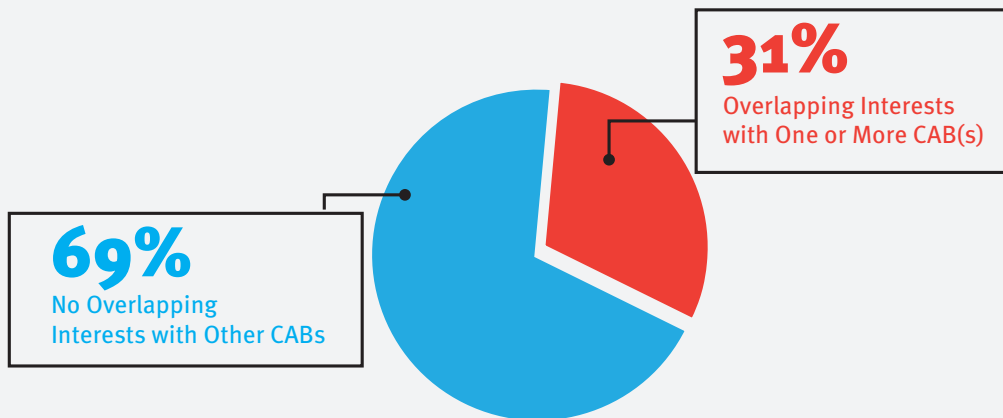
A. While There Appear to be Many CAB Licensees, Multiple Licensees Share Ownership

Just as shared interests in ownership exist between third-party lenders, the same situation is the case for many CABs. However, these shared interests are even more prevalent among CABs than third-party lenders. Sixty-eight, or 31%, of CABs appear to have some sort of shared interest with one or more other CABs. This shared interest generally involves ownership by the same individual or multiple individuals, but may also

involve a complex web of ownership involving multiple CABs and individuals.

Thirty-nine of these 68 CABs have shared interests that are direct in nature, meaning that the same individuals are involved with the ownership and membership of all of the related CABs. Most of these direct connections exist between two CABs.

Percent of CABs with Overlapping Interests, 2012



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

⁵⁰ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

⁵¹ *Id.*

⁵² *Id.*

The Credit Access Businesses with direct overlapping ownership are as follows:

Direct Overlapping Ownership Among CABs ⁵³	
Company Names	Individual(s) Involved in Each CAB
AEL Net of Texas, LLC CNU of Texas, LLC	Timothy Ho, President
All FastBucks Companies (7 total) ⁵⁴ Payday Everyday CSO, LLC	Charles Horton, Director/President
Allied Cash Advance Texas, LLC Southwestern & Pacific Specialty Finance, Inc.	A. David Davis, President
Approved Money Center Online MyCashTime	Robert Gross, President Evan Katz, Director Brian Hawkins, CEO/CFO Frank Cerda, COO
BB & DC Enterprises DC & BB Enterprises	Brian Baker, President David Carr, Vice President
Check into Cash of Texas, LLC Loan by Phone of Texas, LLC	Stephen Scoggins, President
Cybernet Funding, Inc. Webnet Funding, Inc.	Lawren Jones, President Shawn Jones, Vice President Ruth Jones, Treasurer
ETRC, Inc. Federal Cash Advance of Oklahoma, LLC	Jimmy Whitaker, President
Express Title Loans, Inc. Southwest Texas Title Loans, Inc.	Earl Linder
Financial Service Centers of Texas, Inc. My Cash Center, LLC	Douglas Pruett Mary Pruett William Pruett
Graham Cash Express, LLC Joshua Cash to Go, LLC	Tim Eminger Dan Eminger Ben Eminger David Eminger
Meadowwood Financial Services, LLC Wellshire Financial Services, LLC	Roderick Aycox, Director Leslie Aycox, Member Kenneth Wayco, President
DBA Cash Loan Texas (entity name N/A) 77496 LLC	Salima Dharani, Officer
SCIL Texas, LLC The Money Store, LP	Douglas Rippel Chadwick Faulkner, President Matt Miller
Texas EZMONEY, LP Texas EZPAWN, LP EZMONEY Loan Services	James Whatley, President Thomas H. Welch, Director
TitleMax of Texas, Inc. TMX Credit, Inc.	Tracy Young, President

⁵³ *Id.*

⁵⁴ The seven FastBucks CAB companies include FastBucks CSO LLC, FastBucks CSO III LLC, FastBucks of Anthony CSO VI Texas LLC, FastBucks of McKinney CSO IV Texas LLC, FastBucks of North Richland Hills CSO IX Texas LLC, FastBucks of Sherman CSO V Texas LLC, and FastBucks of Terrell CSO XII Texas LLC.

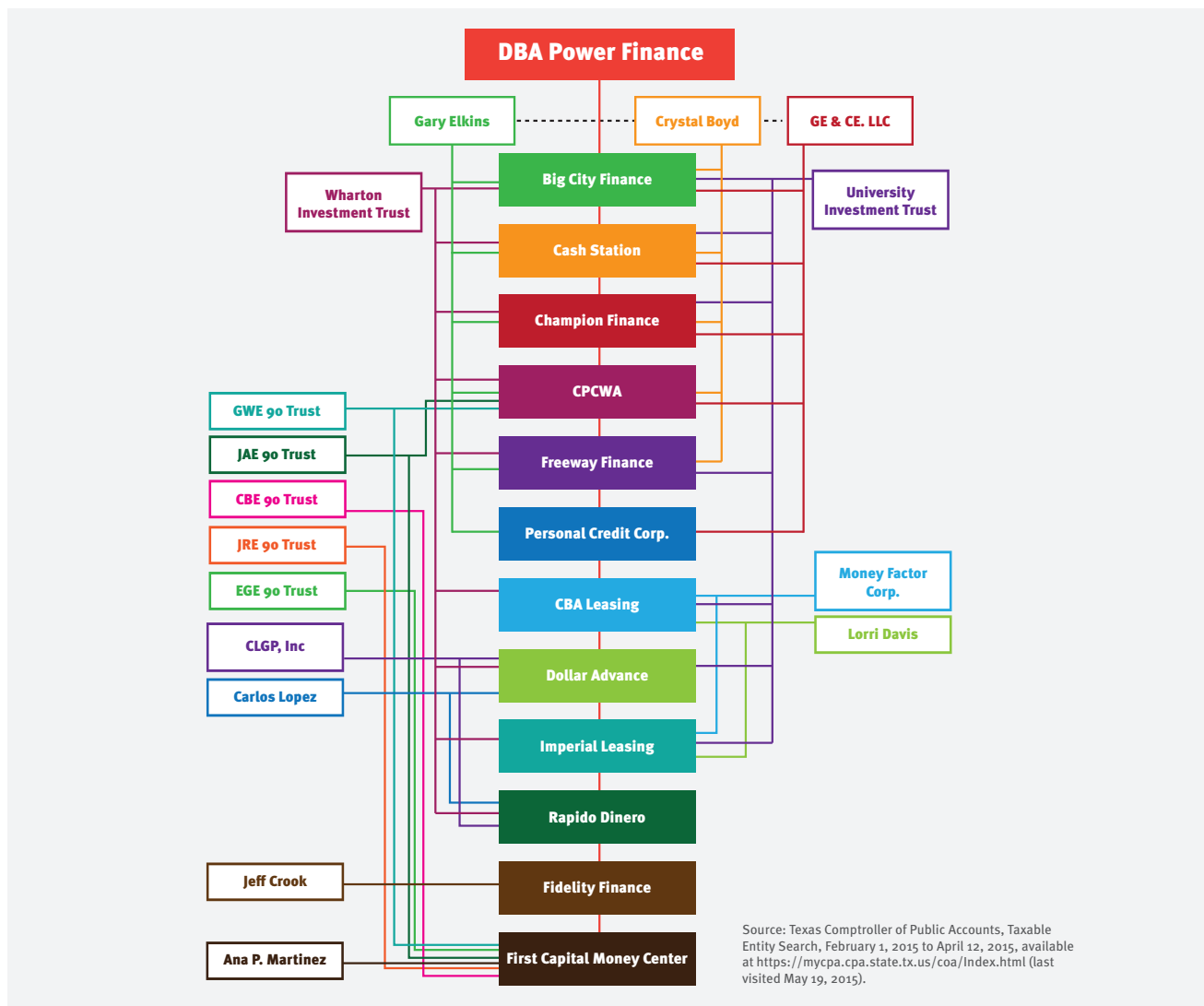
Twenty-five of the 68 companies with overlapping ownership have more complex relationships.⁵⁵ For example, in some instances, a group of individuals are involved in the companies, but not all are involved in each one. These connections generally involve a larger number of CAB companies. These relationships will be presented in the following diagrams to illustrate the complex connections between these companies.

“Doing Business As” (DBA) Power Finance⁵⁶

Twelve different CABs operate under the DBA of Power Finance. The ownership of the various CABs include a web of six individuals, seven trusts, and three corporations.

Many of the trusts appear to be connected to one or more of the individual owners or their family members.

DBA Power Finance: Ownership Connections



⁵⁵ The four remaining CABs of these 68 may not be connected at all, but are owned by individuals with the same, or similar names. David Hendrick is listed as the president of Quick Cash Check Cashing, and another CAB has the entity name, “Hendricks, David.” While these CABs may not actually be related, there is a possibility that the last name is misspelled in one of these instances, and they may refer to the same person. Two other CABs, Jonah Investment Group LLP, and Trezor LLC list Joe Hernandez as President and Director, however, the addresses listed for these companies do not match up, and it is possible that these companies may not have overlapping ownership. Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

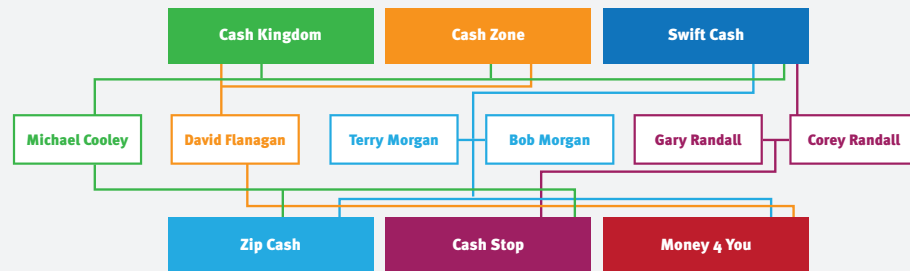
⁵⁶ *Id.*

A Web of “Zones,” “Kingdoms,” and “Cash”⁵⁷

Six CABs share a web of connections. Each CAB appears to be owned by two or three individuals, with each individual having an ownership interest in between one

and three of the group of CABs. With the exception of Cash Kingdom and Cash Zone, each of the CABs shares a different combination of owners.

“Zones,” “Kingdoms,” and “Cash”: Ownership Connections



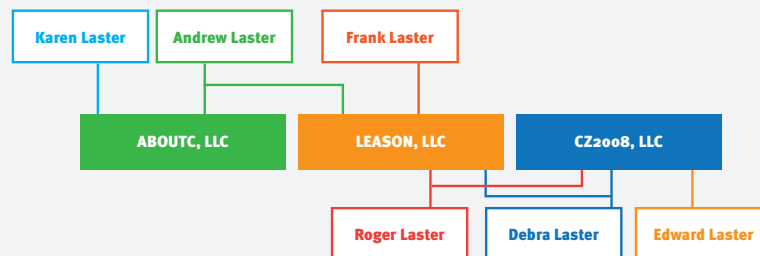
Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

Three Separate CABs; One Family⁵⁸

The three CABs, ABOUTC, LLC, CZ2008, LLC, and Leason, LLC are connected with individuals with the Lasater name. However, only certain individuals are involved in each CAB, in a similar fashion to the ownership structure of the related third-party lending companies. **By only having certain individuals involved with each CAB, rather than having all owners involved in all three,**

the Lasater-affiliated companies are able to avoid having a direct lending connection between CABs and the third-party lenders that share overlapping ownership. These lender-CAB relationships will be discussed in greater detail under the heading “Family Connections: CAB and Third-Party Lenders.”

ABOUTC, LLC; Leason, LLC; and CZ2008, LLC: Ownership Connections



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

⁵⁷ *Id.*

⁵⁸ *Id.*

A Mix of Joint and Separate Ownerships⁵⁹

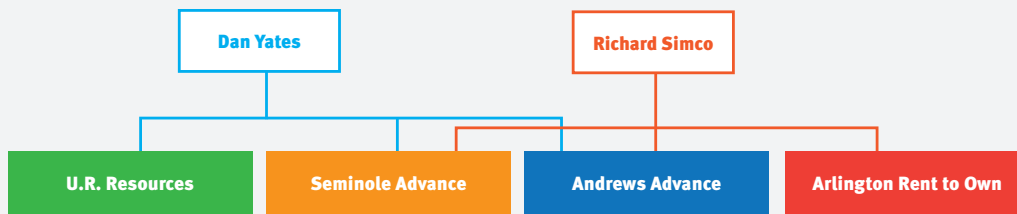
Four CABs, Seminole Advances, U.R. Resources, Andrews Advances, and Arlington Rent to Own, are connected through a mix of overlapping and separate ownership.

Richard Simco and Dan Yates jointly own Seminole Advance and Andrews Advance, but own Arlington Rent to Own and U.R. Resources, separately. This ownership structure seems to be designed to enable these business affiliates to lend to one another's companies without having a direct relationship between the CAB and the third-party lender, which will be evidenced in the section

of the report titled, "Third-party Lenders Serving CABs Owned by a Business Partner."

While most relationships between third-party lenders are characterized by the same individual(s) being involved in multiple companies, many others rely on a more complex web of ownership. The complex web of ownership could be a means to avoid obvious overlapping ownership and to give the appearance of complying with the legal standard of separation between the CAB and the third-party lender.

Overlapping Ownership Connections



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

B. CABs and Third-party Lenders Share Ownership, Operating on the Edge of the Law

Just as shared interests have been shown to exist between multiple third-party lenders and multiple CABs in previous sections, overlapping interests also exist between CABs and third-party lenders. In many cases, third-party lenders with overlapping interests with CABs are the sole lenders to those CABs.

Currently, Texas law permits CABs to utilize third-party lenders, or Credit Service Organizations, to obtain "an extension of consumer credit for a consumer." While the model relies on independence between CABs and third-party lenders, it is unclear how close the relationship

must be before it violates the law.⁶⁰ While some third-party lenders are owned by the same individual owning the CAB they serve, other lenders are owned by family members or business partners who are involved with the CAB owner in other companies, and it remains unclear if these CABs and lenders are operating on the edge of the law or are violating the law.

Of the 135 third-party lenders listed in 2012 CAB license applications, 30, or 22% have some sort of overlapping ownership with a CAB.⁶¹ While some instances of overlapping ownership involve a third-party

⁵⁹ *Id.*

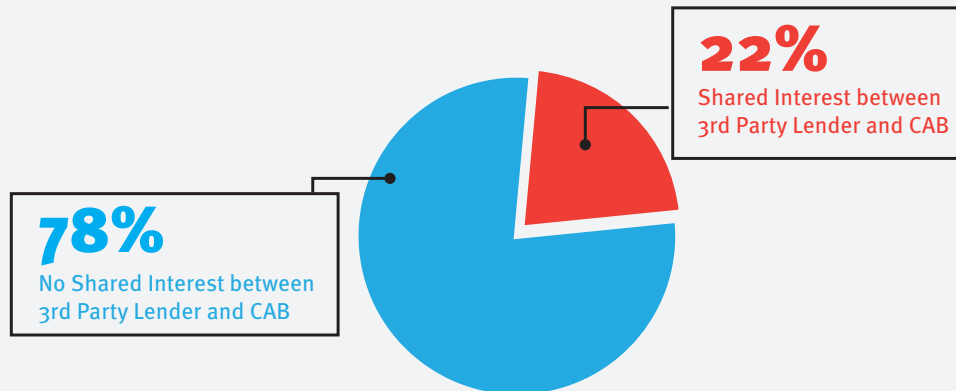
⁶⁰ See Tex. Fin. Code § 393.001. Definitions. 1 January 2012.

⁶¹ Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

lender serving a CAB with the exact same ownership, many involve lending to a CAB owned by family members or business partners. The remainder of these instances simply involve overlapping ownership between CABs and third-party lenders and do not involve any direct

lending relationship. Because these third-party lenders do not lend to a CAB with the same or related ownership, they do not appear to violate any laws or regulations regarding third-party lenders.

Percent of Third-Party Lenders Sharing Ownership with One or More CABs, 2012

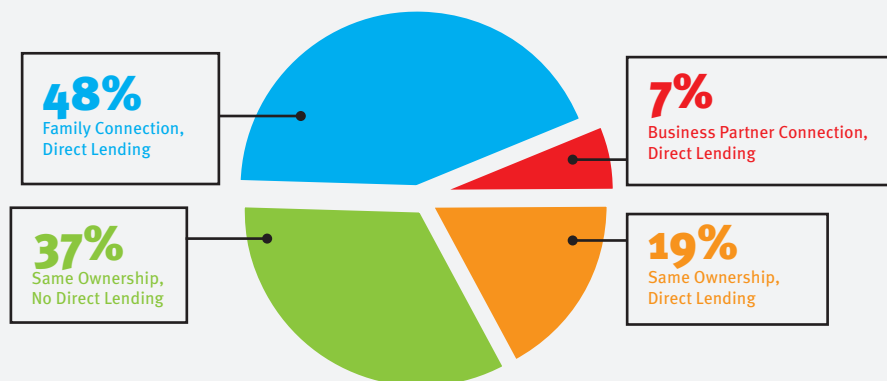


Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

Of the 30 third-party lenders that are connected to one or more CABs, five lend directly to a CAB with the same ownership as that lender.⁶² Thirteen lenders lend to family members who are not listed in direct

ownership of that particular third-party lending company. The remaining 10 lenders do not have a direct lending relationship to the CABs owned by the same individuals as the third-party lender.

Percent of Third-Party Lenders with Shared Interests with CABs by Type, 2012



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

⁶² *Id.*

Third-party Lenders Serving CABs with Same Owners and/or Officers

The five lending connections between third-party lenders and CABs with the same owners are as follows:

Third-party Lenders Serving CABs with Matching Ownership or Officers ⁶³				
CAB	Third-party Lender	Individual(s) Involved in Both Companies	Role(s) in CAB	Role(s) in Third-party
Mas Cash, LLC	Mex Grocer, LLC	Daniel Aceves	President, Member	Registered Agent (officers not on file)
Money Depot of Texarkana, Inc.	Paige Loan, LLC	Eric Botsch	Registered Agent	Registered Agent (officers not on file)
FABSO, Inc.	El Paso Loan Funding Associates, LLC	Marsha Choate	President, Director	Vice President, Director
Presto Loans, LLC	Sundance Finance, LLC	Eugene McKenzie	Registered Agent	Registered Agent, Director
		David King	Controller, Director	Controller, Director
Hill Country Lending Services, LLC	Ridgeback Lending, LLC	Dan Pearce	President, Manager	Registered Agent, Manager

⁶³ *Id.*

Third-party Lenders Serving CABs Owned by Individuals Sharing a Family Name

These CABs are owned by individuals with the same last name as the owners/officers of their third-party lenders, and thus could be related to their respective third-party lenders. Some of the CABs and lenders included in this table are individuals rather than entities, and are listed at the end of the table.

Third-party Lenders Serving CABs with Possible Family Connections					
CAB	Individual(s) Involved	Role(s) in CAB	Third-party Lender	Individual(s) Involved	Role(s) in Third-party
Shaw's R&R Jewelry and Loan, LP	Rodney Corolla	President, Registered Agent	FRAMCO, Inc	Frank Corolla	Registered Agent, President, Director
Advantage Finance, Inc	Asif Dharani	President, Manager	AAA Funding, Inc.	Amirali Dharani	Director
ABOUTC, LLC	Andrew Lasater	President, Registered Agent, Manager, Director	JOZA 2008, LLC	Edward Lasater	Registered Agent
	Karen Lasater	Manager, Director		Debra Lasater	Member
				Roger Lasater	Managing Member
CZ2008, LLC	Edward Lasater	Registered Agent	LKA Enterprises, LLC	Andrew Lasater	Registered Agent, Manager
	Debra Lasater	Member		Karen Lasater	Manager
	Roger Lasater	Managing Member			
Maximum Title Loans, LLC	Barry Marks	Registered Agent, President	JGM Capital	James Marks	Registered Agent, Director, Secretary
Scott St. Title Loans, LLC	Elizabeth Ramirez	President, Registered Agent	RMR Lending, LLC	Roy Ramirez	Registered Agent, Member
	Zach Ramirez	Member, Director			
Texas Loan Brokers I, LLC	Joseph Pearah	President, Registered Agent	Tri-State Funding, LLC	Norman Pearah	Registered Agent
	Todd Pearah	Member/Director			
Rio Title Loans, LLC	Rogelio Saenz	Registered Agent, Director, Member	D'Heights Lending, LLC	Virgilio Saenz	Registered Agent, Director, Member
Pancho's Title Loan, LLC	Molly Sayklay	Member	Say Fam Investments, LLC	Joseph Sayklay	Registered Agent
ETRC, Inc.	Jimmy Whitaker	Registered Agent, President, Vice President	L.B.C. Investments, LLC	Lynna Whitaker	Registered Agent, Managing Member
	Hendricks, David			James and Bobbie Hendricks	
	Nancy Kinuthia			Nelly Kinuthia	
	Cayle Womack			Bill Womac	

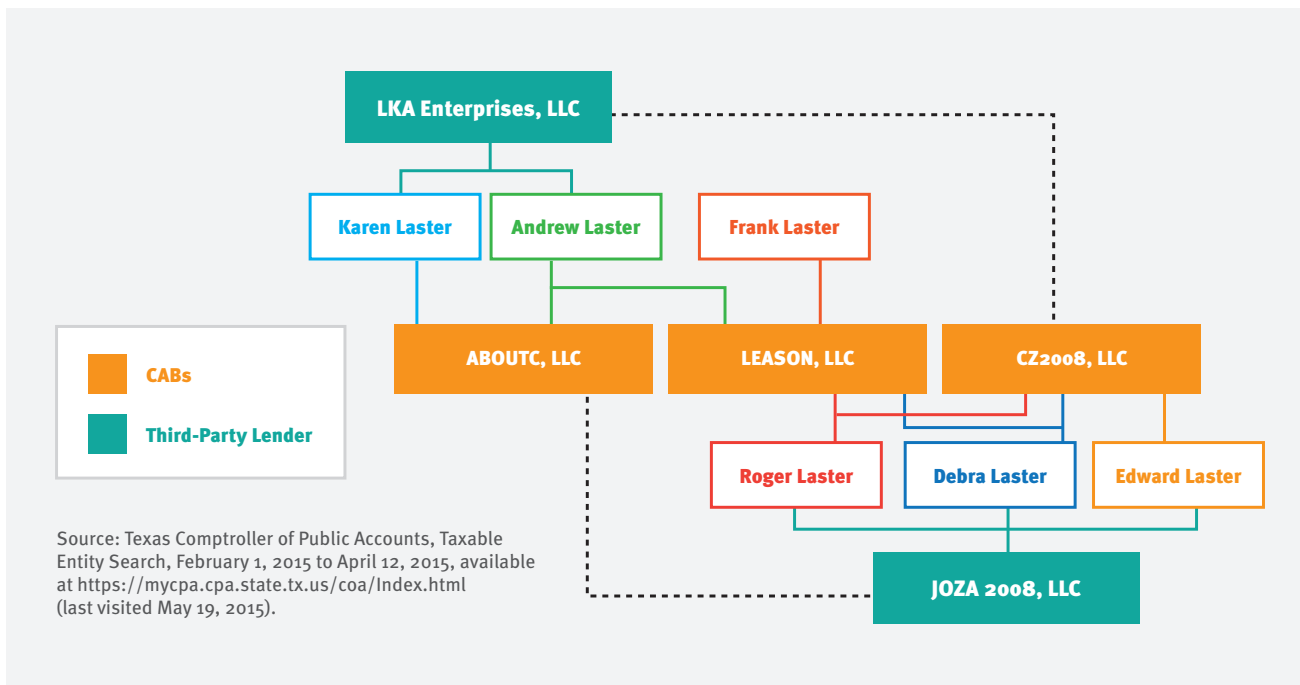
Family Connections: CAB and Third-Party Lenders

As discussed in previous sections, multiple CABs, including ABOUTC LLC, Leason LLC, and CZ2008 LLC, along with third-party lending companies, LKA, and JOZA, are owned by a variety of individuals with the Lasater name. The ownership of these companies is organized in such a way that allows these third-party lenders to lend to CABs owned by Lasaters without lending directly to a CAB owned by the same individual. For example, ABOUTC, LLC lists JOZA as its third-party lender. Karen and Andrew Lasater are owners and officers of ABOUTC, LLC, while Frank, Roger, Debra, and Edward Lasater are officers of JOZA.⁶⁴ This structure is inverted for the lending relationship between CZ2008, LLC and LKA.⁶⁵ Although Leason, LLC is also listed as a CAB owned by the Lasaters, no third-party lender information is provided for this CAB in the data from the OCC.⁶⁶

Third-Party Lenders Serving CABs Owned by a Business Partner

As mentioned in previous sections, Richard Simco and Dan Yates own two CABs together, Andrews Advance and Seminole Advance, which suggests that they are business partners. Although they each own a CAB separately from the other, they also each independently own a third-party lending company, which is listed as the lender to the CAB owned by the other. For example, Dan Yates owns U.R. Resources separately from Richard Simco, and Main Stream Resources serves as the lender to this CAB. Richard Simco owns Main Stream Resources, and this lending relationship, along with their joint ownership of Seminole Advance and Andrews Advance, suggests that these two individuals have a shared interest in lending to one another.⁶⁸

CAB and Third-Party Lender Connections



⁶⁴ *Id.*

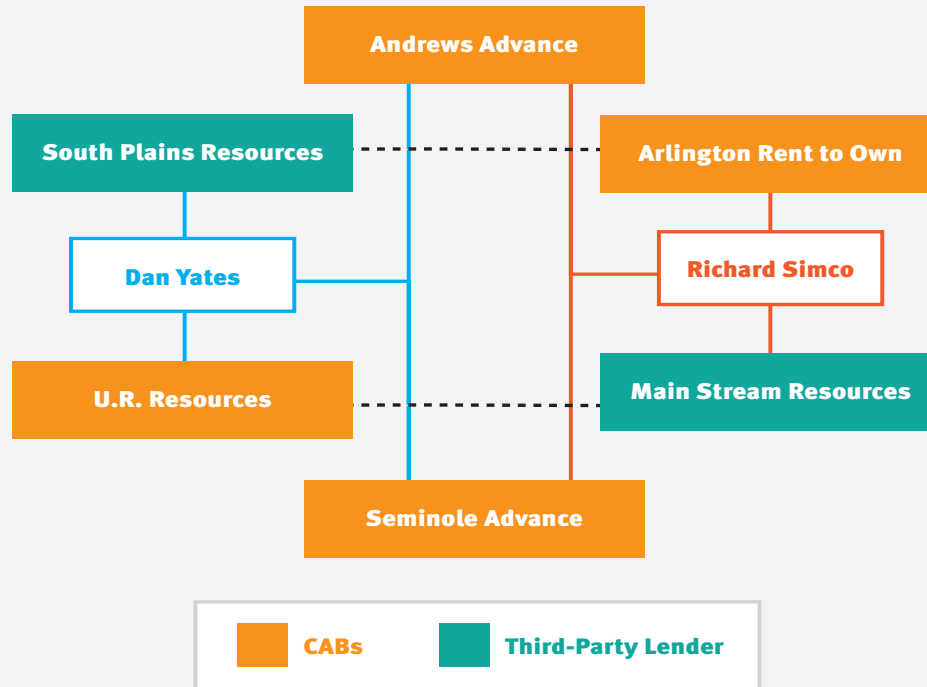
⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

Overlapping Connections Between Owners of CABs and Third-Party Lenders



Source: Texas Comptroller of Public Accounts, Taxable Entity Search, February 1, 2015 to April 12, 2015, available at <https://mycpa.cpa.state.tx.us/coa/Index.html> (last visited May 19, 2015).

The law regarding relationships between CABs and third-party lenders clearly establishes that a CAB and third-party lender should be truly separate entities.⁶⁹ The models of operation that are illustrated in this section exist, at best, on the edge of the law, using technicality to evade the intent of the law. The data show that multiple CABs have been operating under arrangements that call to question the true independence

of the CAB from the third-party lender. The existence of overlapping ownership and shared interests between CABs and third-party lenders seems to indicate that the CAB lending model is largely a scheme to evade usury laws and consumer lending protections in Texas, rather than a tool to benefit consumers or enhance market competition.

⁶⁹ Tex. Fin. Code §393.001 (3).

PART 4

Conclusion and Policy Recommendations

The findings of this inside look at the structure and ownership of payday and auto title loan businesses and the third-party lenders that capitalize the loans supports the assertion that this model of lending is structured to get around the rate and fee caps that currently apply to consumer lending in state law.

More than documenting this structure, the information in this study points to concerning fact patterns in the industry—a pattern of limited competition, with a handful of third-party lenders dominating the market, compromised transparency, and a maze of overlapping ownership among CABs and third-party lenders. Perhaps one of

the greatest ironies of the Texas Finance Code is that the Credit Services Organization Act is under Title 5: “The Protection of Consumers of Financial Services.” As it has played out in the Texas market, it has, in sum, served to hinder rather than enhance consumer protection.

Policy Recommendation 1

CSOs and CABs should not be using the Credit Services Organization Act as an end-run around Texas rate and fee caps for consumer loans. The Texas Legislature should level the playing field for business and consumers alike by requiring that all consumer loan businesses comply with the same rate and fee structures currently established by statute and administrative rules under Title 4 of the Texas Finance Code.

Policy Recommendation 2

A deeper study must be conducted on the source of capital that drives the third-party lender model. The results of this study point to a concerning concentration of capital that undermines market competition and transparency for consumers.

Policy Recommendation 3

Establish clear and enforceable standards to ensure that CSOs do not evade the requirement that they arrange credit “by others.” Standards should prohibit any overlap in ownership, officers, or employees between CABs and third-party lenders that service them, including family relationships among the different owners, as well as business partnerships where the same group of individuals own CABs and third-party lenders, evading the spirit of the law.

Texas families need access to fair and responsible consumer loans. Fair consumer lending markets are key to successful families and local economies. If the CSO/CAB lending market is allowed to persist unchecked, it

will continue to undermine competition and transparency in the Texas market and hinder a fair playing field for consumer lending—for borrowers and lenders alike.



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CENTER for PUBLIC POLICY PRIORITIES

November 29, 2015

Office of Consumer Credit Commissioner
Texas Finance Commission
2601 N Lamar Blvd
Austin, TX 78705

Dear Commissioner Pettijohn,

We appreciate the opportunity to comment on the proposed rules posted in the Texas Register on October 30, 2015, amending Subchapter B: Rules for Credit Access Business. In general, we find that the proposed rules provide some important structure for OCCC licensure compliance and examination procedures. While there are many proposed rules that provide greater clarity, there are some rules that raise further questions and some that are detrimental because they mask transparency and consumer protection.

Helpful Rules, Including Suggested Changes:

There are a number of clarifications in the proposed rules for Credit Access Businesses that are very helpful. Some of the particularly important clarifications are:

- The updated definitions in (§83.1002 (7-8)) for single payment products provide important clarity.
- The deletion of the provisional license (§83.3012) prevents confusion for new applicants
- The delineation of grounds for denial, suspension, or revocation of a license found in §83.4003 (c-1) are excellent. Since any violation of Ch. 393 is a criminal violation (see Tx. Fin. Code §393.501), (c-1) should be more expansive. At a minimum it should explicitly include any violation of the required contract provision in Tx. Fin. Code §393.201 (c)(3), that states:

...a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct[.]”

Our organizations have documented numerous violations of this contract provision, including over 1,500 violations documented in a complaint to state and federal regulators in December of 2014. A pattern of wrongfully using the criminal justice system to collect on a civil debt should be grounds for revoking a credit access business license.

- We strongly support the required retention of documents and records listed under §83.5004. Requiring documentation the consumer's coverage under the Military Lending Act is a crucial protection of military borrowers (§83.5004 (2-A-vii)); requiring documentation of expenses that are assessed to consumers in connection with repossession of a vehicle provides consumers with greater protection from frivolous expenses; the copies of the notifications for disposition, waivers, and evidence of private sale are also helpful accountability measures; and the retention of previous in-store fee schedules for one year or until examination is a good record retention strategy, among the many other strong provisions in the rule.

We ask that any delayed implementation date for generating new records under this section be kept to an absolute minimum. These records are essential to ensure compliance with the law.

Recommended Changes & Potential Problem Areas

There are some additional changes that are needed to provide greater transparency and consistency within the CAB environment.

- For the updated terminology for the product definitions in §83.1002 (4) and (5), using the term “multiple payment” products is inconsistent with the wording of the statute. Tx Fin. Code §393.221(2) states:

(2) "Deferred presentment transaction" has the meaning assigned by Section [341.001](#). For purposes of this chapter, this definition does not preclude repayment in more than one *installment*.

There is no reference in statute to the term “multiple payment.” The definitions in §83.1002 (4) and (5) of the proposed rule are solid definitions and should be maintained. Changing “multiple payment” to “installment” would make the rule consistent with language in statute cited above.

- The community property disclosure should not be removed from §83.3001 (2)(A) or §83.3002 (1-A-iv-I) of the proposed rules. As a community property state the deletion of disclosure of community property reduces transparency, and could enable individuals to cloak shared ownership of a credit access business and a third-party lender—a core tenet of compliance with the law. Information about community property is key to unraveling the kinds of family-based affiliations that are currently being used to get around the legal standard of separation of the CAB and third-party lender.

- §83.5004(2)(A)(viii) requires files and records to include, “complete documentation of any ancillary products (including insurance or an automobile club) offered to the consumer or purchased by the consumer in connection with the transaction.” This provision is important to include, but it should specify two additional items to ensure clarity and consistency with state law:
 1. In the event of an automobile club sale, files should include documentation that the automobile club was sold in compliance with the Texas Finance Code, which permits the product only when it is sold directly by the lender (Tx. Fin. Code §303.203).
 2. In the event of any insurance sale, documentation that appropriate licenses were obtained in accordance with the Texas Finance Code and the Texas Insurance Code.

Neither the CSO Act nor, more generally, the Texas Finance Code permits a Credit Access Business, under its CAB license or CSO registration, to engage in the sale of insurance or to sell an auto club membership in conjunction with arranging an extension of consumer credit. If this language is left without additional specification, it could be construed as tacit approval of such activity, in conflict with current law. Similar specifications should be included for other ancillary products that are not specifically permitted for sale under the CSO Act.

- The proposed rule in §83.5005(a), regarding separation between credit access businesses and third party lenders should further clarify the total separation of the two entities. This separation is the key legal standard upon which the applicability of Texas usury laws to the CSO fees hinges. The CSO Act limits CSO services to those, “with respect to the extension of credit by others.” (Tx. Fin. Code §393.001). Even prominent attorneys representing CABs assert, “the CSO and the third-party lender must be unaffiliated, with no common ownership, no common directors, officers or employees, and with no financial relationship.” (Scott Sheehan, Connie Kondik, and Bob Manning, Payday Loan Bar Associations, Update on the CSO Model at 3 (2006), available at http://www.pdlha.com/images/Update_on_CS0_Model.ppt. Cited by Sealy Hutchings and Matthew Nance, “Credit Access Businesses: The Regulation of Payday and Title Loans in Texas,” *Consumer Finance Law Quarterly Report* (2012).)

This more detailed description combined with a standard that includes in the definition of common ownership, a provision that extends to ownership by family members, such as parents, spouse, siblings, spouses of siblings, children, and other close family relationships, is also consistent the 2006 Texas Attorney General letter that states that the two entities must be “truly independent.”

§83.005(a) should be clarified and hold more tightly to the standard of separation in the law by adding the language: “There should be no common ownership, no common directors, no common officers or employees, nor any common ownership, officers, directors or employees with a first degree family relationship.”

- Related to fee sharing in the proposed rule §83.5005(c), we suggest adding that the fee charged by the licensee “may not ~~directly~~ benefit a third party lender in some way that is not incidental.” This wording is consistent with the standard that the businesses be “truly independent” and the description of the special agency relationship in the *Lovick v. Ritemoney* decision, which relies on the standard in Texas case law, “requiring the lender to benefit from the broker's fee in some way that is not incidental.” (378 F.3d 433, 440 (5th Cir. 2004))

The proposed rules, with these recommended changes, will provide greater transparency and clarity in the credit access business market in Texas. If you have any questions, we are happy to continue working with you and your staff to achieve a fairer loan process.

Respectfully Submitted,

Texas Catholic Conference
 Jeff Patterson: REDACTED
 Jennifer Allmon: REDACTED

Texas Appleseed
 Ann Baddour: REDACTED

Christian Life Commission
 Kathryn Freeman: REDACTED

AARP Texas
 Tim Morstad: REDACTED

RAISE Texas
 Woody Widrow: REDACTED

Texas NAACP
 Yannis Banks: REDACTED

Helping Hands of Belton
 Rucker Preston: REDACTED

Center for Public Policy Priorities
 Laura Rosen: REDACTED

B. AGENCY RULES

OFFICE OF CONSUMER CREDIT COMMISSIONER

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on New §83.3003 (repeal and replace); the Proposal and Publication for Comment on Amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and on the Proposal and Publication for Comment on the Repeal of §83.3003 (repeal and replace); in 7 TAC, Chapter 83, Subchapter B, Concerning Rules for Credit Access Businesses, Resulting from Rule Review

PURPOSE: The purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039. The proposed rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers. Section 83.3003 is being proposed for repeal and replacement with a new rule clarifying license transfers.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve new §83.3003; approve the amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and approve the repeal of §83.3003 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment new §83.3003; the amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and the repeal of §83.3003.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter B. Rules for Credit Access Businesses

The Finance Commission of Texas (commission) proposes new §83.3003 (repeal and replace); proposes amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and proposes the repeal of §83.3003 (repeal and replace), in 7 TAC, Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

In general, the purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The proposed rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

This is the second of two anticipated rule actions for credit access businesses. In this issue of the *Texas Register*, the commission is concurrently adopting the first rule action, which includes rule changes relating to definitions, license applications, fees, examination authority, and recordkeeping requirements.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The agency circulated an early draft of proposed changes to interested stakeholders. The agency then held a stakeholders meeting

where attendees provided oral precomments. In addition, the agency received one informal written precomment. Certain concepts recommended by the precommenters have been incorporated into this proposal, and the agency appreciates the thoughtful input provided by stakeholders.

The individual purposes of the proposed amendments are outlined in the paragraphs to follow.

Section 83.3003 is proposed for repeal and replacement with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Currently, Section 83.3003 describes what constitutes a transfer of ownership requiring the filing of a transfer application. The proposed new rule largely maintains the requirements under the current rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. In response to an informal comment, the proposal refers to the new application as a "new license application on transfer of ownership." The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed location. In response to a precomment, this

definition includes technical changes to the definition of "transfer of ownership" currently codified at §83.3003(a). These changes include placing the reference to acquisition by gift, devise, or descent in the general language at the beginning of the definition, and removing the current rule's statement that a transfer of ownership includes an acquisition where the Office of Consumer Credit Commissioner (OCCC) "has reason to believe that proper regulation of the licensee dictates that a transfer must be processed."

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing credit access business license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. The subsection's second sentence states: "A request for permission to operate may be denied even if the application contains all of the required information." This sentence is

similar to a sentence in the current rule at §83.3003(d). One precommenter requested that this sentence be removed, stating that it is overly broad and recommending that the rule should specify the categories of reasons for denying the request for permission to operate. The agency believes that listing the categories for denying a permission to operate, such as enforcement and management issues, is unnecessary. The permission to operate is a temporary authorization, and denial of the request is not a final denial of the license application. In addition, prudent parties can submit application materials well in advance of the transfer of ownership. By doing this, the parties can ensure that they have resolved outstanding issues without having to rely on the temporary permission to operate.

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. One precommenter requested a "time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making the decision before the deadline." The agency believes that a time frame for the permission to operate is unnecessary. As discussed above, denial of the request is not a final denial of the license application. Although the agency has occasionally denied requests for permission to operate in certain situations in the past, the agency would generally deny the application if there were a significant issue preventing approval. Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the

transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §83.3004, concerning Change in Form or Proportionate Ownership, conforming changes are proposed corresponding to proposed new §83.3003. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

In §83.5001, concerning Data Reporting Requirements, the proposed amendments would codify the administrative penalty structure currently used by the agency, where the penalties increase the more times a credit access business fails to send in a timely, accurate report within a reporting year. Subsection (e)(2) provides a \$100 administrative penalty per licensed location for the first violation, \$500 for the second violation, and \$1,000 for the third and subsequent violations. In addition, subsection (e)(3) provides for license suspension or revocation for the fourth or subsequent violation. These amendments are based on Texas Finance Code, §14.251(a-1), which authorizes the agency to assess an administrative penalty against a credit access business that knowingly and wilfully violates Chapter 393, and Texas Finance Code, §393.614(a), which authorizes the agency to suspend or revoke a credit access business license if the licensee knowingly violates Chapter 393.

In §83.6003, concerning Posting of Fee Schedule and Notices, the proposed amendments would update the in-store notice with the OCCC's contact information. Under Texas Finance Code, §393.222(a)(2), a credit access business must post a notice containing the OCCC's contact information

in a conspicuous location. The proposed amendment to subsection (a)(2) includes the OCCC's updated website and the updated email address for consumer complaints. The proposed amendment also includes updated language regarding how to file a complaint. The proposed amendment to subsection (b)(2) contains a conforming change describing the notice as the "OCCC notice."

In §83.6006, concerning Format, a proposed amendment to subsection (c) specifies that the consumer cost disclosure must fit on one page, printed on one side. This replaces the current language stating that the disclosure must be printed on two pages. The proposed amendment conforms to the proposed amended figures in §83.6007, which are shortened from two pages to one.

In §83.6007, concerning Consumer Disclosures, proposed amendments in subsections (a) through (d) make a technical correction to replace the word "or" with "and." The proposed amendments require the credit access business to provide the consumer cost disclosure "before a credit application is provided and before a financial evaluation occurs." One precommenter requested clarification that the disclosure must be provided only once. To clarify, the credit access business must provide the disclosure once, at a time that is both before a credit application is provided and before a financial evaluation occurs. This provision is based on Texas Finance Code, §393.222(a), which requires the credit access business to provide the disclosure "[b]efore providing services described by Section 393.221(1)," that is, before the credit access business assists the consumer in obtaining a payday or title loan.

The proposal also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure. The proposed amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. There are two primary purposes to the proposed amendments to the disclosures. First, the proposed amendments streamline the disclosures to simplify layout and remove redundant information. Second, the proposed amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2014 quarterly and annual reports provided by credit access businesses to the OCCC.

In addition, the proposed amendments to the consumer disclosures include information required by state and federal law. Texas Finance Code, §393.223(a), requires the consumer disclosure to include "(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt; (2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and (3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans." The consumer disclosure must also include additional items to comply with the advertising provisions of the Truth in Lending Act, 15 U.S.C. §1664, and

Regulation Z, 12 C.F.R. §1026.24. In particular, Regulation Z, 12 C.F.R. §1026.24(d)(2), requires disclosure of the annual percentage rate and terms of repayment. Also, 12 C.F.R. §1026.24(c) provides that if a simple rate of interest other than the annual percentage rate is disclosed, it must be "stated in conjunction with, but not more conspicuously than, the annual percentage rate."

The proposed amendments to the consumer disclosures include changes based on oral precomments made at the stakeholders meeting on the proposed rules. Two precommenters suggested that the annual percentage rate should be more prominent than the interest rate paid to the third-party lender, and that the interest rate should be disclosed below the dollar amount of interest. In response to this precomment, the interest rate has been placed near the dollar amount of interest. One precommenter also suggested that for the multiple-payment disclosures, the disclosure should include the total amount of fees and interest the consumer would pay at the end of the term of the loan, in addition to the amounts for two weeks, one month, two months, and three months. In response to this precomment, the proposed multiple-payment disclosures include an additional row with this information. Credit access businesses may omit this extra row if the loan term is two weeks, one month, two months, or three months, and they may move the extra row if the loan term falls in between one of the other periods.

In §83.6008, concerning Permissible Changes, the proposed amendments include an updated citation to Regulation Z. In addition, proposed new subsection (a)(6) specifies that the disclosure may include a form number, and proposed new subsection

(b) specifies that the credit access business may make changes to the consumer disclosure that the OCCC approves in writing.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the rule changes are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn also has determined that for each year of the first five years the rule changes are in effect, the public benefit anticipated as a result of the changes will be increased protection of consumers, clear and consistent regulations for credit access businesses, and enhanced compliance with the law. Another public benefit of these rule amendments will be increased uniformity and consistency in credit contracts.

Additional economic costs may be incurred by a person required to comply with this proposal. The agency anticipates that any costs resulting from the proposal would involve complying with the proposed amendments to the consumer disclosure rules contained in §§83.6003, 83.6006, 83.6007, and 83.6008.

For those who will be required to comply with the proposed disclosure amendments, the anticipated costs would include the costs associated with producing new forms, and costs attributable to the loss of obsolete forms inventory.

The agency has attempted to lessen any potential costs by providing on the agency's website fillable PDF versions of the disclosure forms free of charge. Additionally, the agency is considering a

delayed implementation date for use of the revised forms, which will help minimize potential costs and allow use of current forms inventory. In particular, the agency is considering possible compliance dates of either September 1, 2016, or January 1, 2017, and invites comments on this issue.

For licensees not using the fillable forms provided by the agency online, any additional economic costs are anticipated to be minimal, with an estimated programming time of less than five hours to produce the updated forms. Furthermore, these costs would be partially offset by reduction in paper costs, as all of the forms have been reduced from two pages to one page each.

Regarding the proposed license transfer rule changes contained in §83.3003 and §83.3004, there is no anticipated cost to persons who are required to comply with the changes to these two rules as proposed.

Regarding the proposed amendments concerning data reporting in §83.5001, any costs associated with these amendments would not be incurred by licensees that timely and accurately file their quarterly and annual reports. For those compliant licensees, any costs are avoidable in their entirety. For licensees not in compliance with the current reporting requirements, the proposed amendments to §83.5001 do not impose any increased costs, as the amendments simply memorialize the agency's current penalty practice. As a result, there is no anticipated additional cost to persons who are required to comply with the amendments to §83.5001 as proposed.

Overall, the agency anticipates that any costs involved to comply with the proposal will be minimal for most licensees. Aside from the previously outlined costs to

produce updated disclosure forms, there will be no other effects on individuals required to comply with the rule changes as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These rule changes are proposed under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are proposed under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules

relating to reporting. The amendments to §83.6005 are proposed under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are proposed under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3003. Transfer of License; New License Application on Transfer of Ownership.
{{This section will replace the current section 83.3003, which will be repealed.}}

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or

a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.3004 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of

ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC

may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business license at the time of the application, then

the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate

and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a credit access business. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application.

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. In addition, a transferee is

responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.

§83.3004. Change in Form or Proportionate Ownership.

(a) (No change.)

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a license transfer application or a new license application on transfer of ownership pursuant to §83.3003 of this title (relating to Transfer of License; New License Application on Transfer of Ownership). If the merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 10 calendar days after the change, by filing a license amendment and paying the required fees as provided in §83.3010 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a license transfer application or a new license application on transfer of ownership, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §83.3010 of this title. This section does not apply to a publicly held corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held parent corporation, although a transfer application may be required under §83.3003 of this title.

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a license transfer application or a new license application on transfer of ownership under §83.3003 of this title.

§83.5001. Data Reporting Requirements.

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly

data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. All information provided on each quarterly or annual report must be accurate.

(b) - (d) (No change.)

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file a complete, accurate quarterly or annual report.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly or wilfully violates this section.

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the administrative penalty is \$100 for each licensed location.

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A), then the administrative penalty is \$500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B), then the administrative penalty is \$1,000 for each licensed location. The \$1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(3) Suspension or revocation for fourth or subsequent violation. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(2)(C), then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

§83.6003. Posting of Fee Schedule and Notices.

(a) In-person sales. A credit access business must prominently display the following in the licensee's office in a conspicuous location visible to the general public:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) the following OCCC [~~consumer credit~~] notice: "This business is licensed and examined under Texas law by the Office of Consumer Credit Commissioner (OCCC), a state agency. If a complaint or question cannot be resolved by contacting the business, consumers can contact the OCCC to file a complaint or ask a general credit-related question. OCCC address: 2601 N.

Lamar Blvd., Austin, Texas 78705. Phone:
(800) 538-1579. Fax: (512) 936-7610.
Website: occc.texas.gov. Email:
consumer.complaints@occc.texas.gov."

~~["This business is licensed and examined by the State of Texas — Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 4207, (800) 538-1579, consumer.complaints@occc.state.tx.us, www.occc.state.tx.us."]; and~~

(3) the notice required by Texas Finance Code, §393.222(a)(3).

(b) Internet sales. For business conducted through the Internet, a credit access business must prominently display the information provided in subsection (a) of this section in a conspicuous location on the business's website and on any website where the business advertises to the public.

(1) Direct link for fee schedule. The posting required by subsection (a)(1) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "Fee Schedule" or "Schedule of All Fees."

(2) Direct link for OCCC [~~consumer credit~~] notice. The posting required by subsection (a)(2) of this section may be accessible via a direct link with the subject matter listed substantially similar to the following: "OCCC Notice" or "Consumer Credit Notice." [~~"Consumer Credit Notice," "OCCC Notice," or "Complaints and Inquiries Notice."~~]

§83.6006. *Format.*

(a) - (b) (No change.)

(c) The consumer disclosure for each product offered under Texas Finance Code, Chapter 393 must be provided to consumers as a separate document. Each product disclosure must fit on one standard-size sheet of paper (8 1/2 by 11 inches), printed on one side [~~both sides, or on two standard sheets of paper printed only on the front sides of each page~~].

§83.6007. *Consumer Disclosures.*

(a) Consumer disclosure for single payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a single payment payday loan is presented in the following figure.

Figure: 7 TAC 83.6007(a) {*See attached amendments.*}

(b) Consumer disclosure for multiple payment payday loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a multiple payment payday loan is presented in the following figure.

Figure: 7 TAC 83.6007(b) {*See attached amendments.*}

(c) Consumer disclosure for single payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and

[~~or~~] before a financial evaluation occurs in conjunction with a single payment auto title loan is presented in the following figure.

Figure: 7 TAC 83.6007(c) *{See attached amendments.}*

(d) Consumer disclosure for multiple payment auto title loan. The required disclosure under Texas Finance Code, §393.223 to be provided to a consumer before a credit application is provided and [~~or~~] before a financial evaluation occurs in conjunction with a multiple payment auto title loan is presented in the following figure.

Figure: 7 TAC 83.6007(d) *{See attached amendments.}*

(e) - (f) (No change.)

§83.6008. Permissible Changes.

(a) A credit access business must use the required disclosures under Texas Finance Code, §393.223 as prescribed by Figures: 7 TAC §83.6007(a) - (d) of this title (relating to Consumer Disclosures), but may consider making only limited technical changes, as provided by the following exclusive list:

(1) Filling in any dollar amounts, interest rates, or other terms specific to the three to five most common loans for each of the products offered by the credit access business;

(2) Substituting the pronouns used to denote the consumer by substituting words such as "you" and "your" for "I" and "my," along with appropriate grammatical changes;

(3) Adding an optional, dated signature block at the very bottom of the disclosure form, which must include the following statement directly above the signature line of the consumer:

"ACKNOWLEDGMENT OF RECEIPT: By signing below, I acknowledge only that I have received a copy of this disclosure prior to signing any contract for a payday or auto title loan, this ____ day of _____, 20__."

(4) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure regarding military borrowers under 10 U.S.C. §987 and 32 C.F.R. Part 232;

(5) Combining the Texas Finance Code, §393.223 disclosure with the federal disclosure requirements for advertising under the Truth in Lending Act, 15 U.S.C. §1632(a), and Regulation Z, 12 C.F.R. §1026.24; [its implementing regulations, 12 C.F.R. §226.24.]

(6) a form number indicating the version of the form, the date the form was produced, or both.

(b) A credit access business may make changes other than those specified in subsection (a) only if the OCCC has approved the changes in writing.

(c) [~~(b)~~] The permissible changes allowed by this section must not result in decreasing a font size by more than one point or a chart size by more than 10% from the required disclosure. Permissible changes cannot otherwise interfere with the presentation or layout of the disclosed information.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 18, 2015.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

CAB NAME HERE

Payday Loan

\$500, One Payment

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$ 500.00
Interest paid to lender (interest rate: 10 %)	\$ 2.40
Fees paid to CAB name here	\$ 125.00
Total of payments (if I pay on time)	\$ 627.40





APR (cost of credit as a yearly rate)	664.30 %
Term of loan	2 weeks

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ 127.40	\$ 627.40
1 Month	\$ 254.80	\$ 754.80
2 Months	\$ 509.60	\$ 1,009.60
3 Months	\$ 734.40	\$ 1,234.40

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	16%	30%	89%	180%	229%	410%	Average APR
	\$1.32	\$3.51	\$12.52	\$15.00	\$18.85	\$33.72	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new single-payment payday loan:	
	3½ will pay the loan on time as scheduled (typically 30 days)
	1 will renew 1 time before paying off the loan
	2 will renew 2 to 4 times before paying off the loan
	3 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Payday Loan

\$500, 10 Payments

Cost Disclosure

Cost of this loan:

Borrowed amount (cash advance)	\$ 500.00
Interest paid to lender (interest rate: 10%)	\$ 26.00
Fees paid to CAB name here	\$ 775.00
Payment amounts (payments due every 2 weeks)	Payments #1-#9 \$ 136.24 (Final) Payment #10 \$ 74.84
Total of payments (if I pay on time)	\$ 1,301.00




APR (cost of credit as a yearly rate)	614.51 %
Term of loan	20 weeks

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ 779.89	\$ 1,279.89
1 Month	\$ 784.28	\$ 1,284.28
2 Months	\$ 791.53	\$ 1,291.53
3 Months	\$ 796.74	\$ 1,296.74
20 Weeks	\$ 801.00	\$ 1,301.00

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	16%	30%	89%	180%	229%	410%	Average APR
	\$1.32	\$3.51	\$12.52	\$15.00	\$18.85	\$33.72	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment payday loan:	
	7 will pay the loan on time as scheduled (typically 5 months)
	1 will renew 1 to 4 times before paying off the loan
	2 will renew 5 or more times or will never pay off the loan.

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$500, One Payment
Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ 500.00
Interest paid to lender (interest rate: 10 %)	\$ 5.41
Fees paid to CAB name here (includes a one-time \$33 title fee)	\$ 158.00
Total of payments (if I pay on time)	\$ 663.41

APR (cost of credit as a yearly rate)	297.68 %
Term of loan	1 month

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ 160.52	\$ 660.52
1 Month	\$ 163.41	\$ 663.41
2 Months	\$ 293.61	\$ 793.61
3 Months	\$ 423.81	\$ 923.81

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	16%	30%	89%	180%	229%	410%	Average APR
	\$1.32	\$3.51	\$12.52	\$15.00	\$18.85	\$33.72	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment auto title loan:	
	3 will pay the loan on time as scheduled (typically 30 days)
	1 will renew 1 time before paying off the loan
	1½ will renew 2 to 4 times before paying off the loan
	4 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

CAB NAME HERE

Auto Title Loan

\$500, 11 Payments

Cost Disclosure



You can lose your car.

If you miss a payment or make a late payment, your car can be repossessed.

Cost of this loan:

Borrowed amount (cash advance)	\$ 500.00
Interest paid to lender (interest rate: 10%)	\$ 30.29
Fees paid to CAB name here (includes a one-time \$33 title fee)	\$ 868.00
Payment amounts (payments due every 2 weeks)	Payments #1-#10 \$ 132.45 (Final) Payment 11 \$ 74.07
Total of payments (if I pay on time)	\$ 1,398.57

APR (cost of credit as a yearly rate)	564.57	%
Term of Loan	22 weeks	

If I pay off the loan in:	I will have to pay interest and fees of approximately:	I will have to pay a total of approximately:
2 Weeks	\$ 873.25	\$ 1,373.25
1 Month	\$ 878.01	\$ 1,378.01
2 Months	\$ 886.06	\$ 1,386.06
3 Months	\$ 892.13	\$ 1,392.13
22 Weeks	\$ 898.29	\$ 1,398.57

Cost of other types of loans:

Least Expensive	Credit Cards	Secured Loans	Signature Loans	Pawn Loans	Auto Title Loans	Payday Loans	Most Expensive
	↓	↓	↓	↓	↓	↓	
	16%	30%	89%	180%	229%	410%	Average APR
	\$1.32	\$3.51	\$12.52	\$15.00	\$18.85	\$33.72	Average fees & interest per \$100 borrowed over 1 month

Repayment:

Of 10 people who get a new multi-payment auto title loan:	
	5 ½ will pay the loan on time as scheduled (typically 6 months)
	1 will renew 1 time before paying off the loan
	1 will renew 2 to 4 times before paying off the loan
	2 ½ will renew 5 or more times or will never pay off the loan

This data is from 2014 reports to the OCCC.

Before getting this loan, ask yourself:

- Do I need to borrow this money?
- Can I pay back the loan **in full** when it is due?
- Can I pay my bills and repay this loan?
- Can I afford late charges if I miss a payment?
- Do I have other credit options?

OCCC notice:

- This company is regulated by the Texas Office of Consumer Credit Commissioner (OCCC).
- OCCC Consumer Helpline: (800) 538-1579, consumer.complaints@occc.texas.gov.
- Visit occc.texas.gov for more information.
- This disclosure is provided under Texas Finance Code Section 393.223.

B. AGENCY RULES

OFFICE OF CONSUMER CREDIT COMMISSIONER

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment on Amendments to 7 TAC, Chapter 85, Subchapter B, Concerning Rules for Crafted Precious Metal Dealers, Resulting from Rule Review

PURPOSE: The purpose of the proposal regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The proposed amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 85, Subchapter B for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Chapter 85, Subchapter B.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter B. Rules for Crafted Precious Metal Dealers

The Finance Commission of Texas (commission) proposes amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC, Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The proposed amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction is proposed to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" will be inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of

the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintain a police department, and to the sheriff of the county if the transaction occurs in another location.

In §85.1009, concerning Revocation, an amendment is proposed in subsection (b) to update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

Concurrent with these proposed rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and a which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The proposed amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two proposed amendments regarding recently revised information. The first amendment in subsection (a)(8) corresponds to 2015 legislation, and the second in subsection (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities . . . because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session.

HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses, and it goes into effect on January 1, 2016.

As a result, the proposed amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this proposal amends §85.2001(a)(13) with the OCCC's updated contact information.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the rules.

Commissioner Pettijohn has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be that the commission's rules will comply with state and federal law and will be more easily understood and enforced. Another public benefit of these rule amendments will be increased uniformity and consistency in transaction forms.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the proposed amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

(1) - (4) (No change.)

(4) Local law enforcement.

(A) (No change.)

(B) For mail order or Internet sales, local law enforcement is:

(i) (No change.)

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) (No change.)

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

(5) - (10) (No change.)

§85.1009. Revocation.

(a) (No change.)

(b) Upon receiving notice of revocation under this section, an affected person may request a hearing before the OCCC. The hearing will be conducted under the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions). [~~—as provided in Texas Government Code, Chapter 2001, and Part 1, Chapter 9,~~

~~Subchapter B of this title (relating to Contested Case Hearings).]~~

§85.2001. Transaction Report Form and Records.

(a) Required elements. For each transaction in which a dealer purchases crafted precious metal, the dealer must prepare a transaction report form. The report form must be preprinted and prenumbered and must contain the following required elements:

(1) - (7) (No change.)

(8) the seller's driver's license number, ~~[or]~~ personal identification certificate number, or handgun license number;

(9) - (12) (No change.)

(13) the following notice: "This business is registered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against this business may contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.texas.gov. [~~consumer.complaints@occc.state.tx.us.~~] Website: occc.texas.gov. [~~www.occc.state.tx.us.~~]"

(b) - (c) (No change.)

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 18, 2015.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

Rule Item/Purpose	Proposal Date	Adoption Date
Rules Regarding Contested Case Procedure - Adopt Amendments 7 TAC, Part 1, Chapter 4 7 TAC, Part 5, Chapters 83, 84, 85, 88, and 89 To clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the OCCC	10/16/15	Presented for Adoption 12/18/15
Rules for Crafted Precious Metal Dealers - Adopt Completed Rule Review 7 TAC, Part 5, Chapter 85, Subchapter B To adopt the completed rule review of Chapter 85, Subchapter B under Tex. Gov't Code, §2001.039	Not applicable	Presented for Adoption 12/18/15
Rules for Credit Access Businesses - Adopt Amendments, New Rules, and Repeals (from Rule Review, Part 1) 7 TAC, Part 5, Chapter 83, Subchapter B To clarify definitions, license application requirements, and fees; to provide examination and recordkeeping requirements	10/16/15	Presented for Adoption 12/18/15
Rules for Credit Access Businesses - Proposed New Rule, Amendments, and Repeal (from Rule Review, Part 2) 7 TAC, Part 5, Chapter 83, Subchapter B To update consumer disclosures; to clarify reporting requirements and license transfers <i>Precomment draft distributed November 4, 2015</i> <i>Stakeholders meeting held November 18, 2015</i>	12/18/15	
Rules for Crafted Precious Metal Dealers - Proposed Amendments (from Rule Review) 7 TAC, Part 5, Chapter 85, Subchapter B To provide clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information	12/18/15	

Rule Item/Purpose	Proposal Date	Adoption Date
Motor Vehicle Installment Sales - Rule Review 7 TAC, Part 5, Chapter 84 To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to provide more detailed documentary fee reasonableness and submission requirements; to make technical corrections	02/19/16	
Interpretations and Advisory Letters - Rule Review 7 TAC, Part 1, §1.201 To conduct standard 4-year review under Tex. Gov't Code, §2001.039	06/10/16	
Administration - Rule Review 7 TAC, Part 5, Chapter 82 To conduct standard 4-year review under Tex. Gov't Code, §2001.039; to update public information procedures; to make technical corrections	06/10/16	
Tax Refund Anticipation Loans - Rule Review 7 TAC, Part 5, Chapter 87 To conduct standard 4-year review under Tex. Gov't Code, §2001.039	06/10/16	

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9. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §21.24, Concerning Exemptions for Family Trust Companies.

PURPOSE: Finance Code §182.011 and §182.012 were amended effective September 1, 2015, to materially revise the requirements for exemption as a family trust company. In general, prior to September 1, 2015, a trust company could obtain an exemption from certain otherwise applicable requirements if it restricted its client services to individuals related within the fourth degree of affinity or consanguinity to an individual who controls the trust company, and to certain of their related interests. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members.

The amendments to §21.24 implement the new statutory changes and provide guidance to both existing and future proposed family trust companies.

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §21.24. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §21.24 without changes to the proposal as previously published in the *Texas Register*.

Title 7. Banking and Securities***Part 2. Texas Department of Banking******Chapter 21. Trust Company Corporate Activities******Subchapter B. Trust Company Chartering and Powers******7 TAC §21.24***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §21.24, concerning exemptions for family trust companies, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7521), and will not be republished.

Finance Code §182.011 and §182.012 were amended effective September 1, 2015, by Sections 5 and 6 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §§5-6), to materially revise the requirements for exemption as a family trust company. In general, prior to September 1, 2015, a trust company could obtain an exemption from certain otherwise applicable requirements if it restricted its client services to individuals related within the fourth degree of affinity or consanguinity to an individual who controls the trust company, and to certain of their related interests. Effective September 1, 2015, the exemption is available to a trust company that serves only individuals related within the seventh degree to a shared common ancestor and their related interests, provided the trust company is wholly owned by family members, see Finance Code §182.011(a).

Section 21.24 specifies the information that must be contained in an application for exemption as a family trust company, and further specifies the specific provisions of the Trust Company Act (Finance Code, Title

3, Subtitle F), from which a trust company may request an exemption, subject to conditions or limitations imposed by the banking commissioner. The amendments to Subsection (a) clarify the definition of "family member" by eliminating ambiguities in Finance Code, §182.011(a-1)(2), and define the term "key employee" as required by Finance Code, §182.011(a-1)(1)(C).

New §21.24(f) establishes one year as a reasonable transition period for terminating services to a former key employee or to a formerly revocable trust that is no longer an eligible family client. The banking commissioner is empowered to grant an extension of up to one year based on a finding that additional time is needed for the trust company to appropriately discharge its fiduciary duty to affected beneficiaries, notwithstanding its demonstrated good faith efforts to terminate the ineligible relationship.

New §21.24(g) extends the revised statutory exemption scheme to a family trust company that was granted exempt status prior to September 1, 2015. However, the control person named in its certificate of formation is deemed to be the shared common ancestor for purposes of determining family client eligibility under Finance Code, §182.011, unless the trust company amends its certificate of formation to name a new shared common ancestor.

ADOPTION OF AMENDMENTS TO 7 TAC §21.24

Page 2 of 4

Finally, amendments to §21.24 that are not discussed in this preamble are nonsubstantive and adopted solely to conform the text to new law and to the other amendments to §21.24.

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003, which grants the commission authority to adopt rules to implement and clarify applicable law, and Finance Code §182.011(e)(2)-(4), which grants the commission authority to adopt rules (1) specifying the provisions of Finance Code, Title 3, Subtitle F that are subject to an exemption request, (2) establishing procedures and requirements for obtaining, maintaining, or revoking an exemption, and (3) defining or further defining terms used in Finance Code §182.011.

§21.24. Exemptions for Family Trust Companies.

(a) Definitions. Definitions in Finance Code, §182.011(a-1), are incorporated herein by reference except for the term "family member." As used in this section and in Finance Code, Title 3, Subtitle F (the Trust Company Act), the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Family" means individuals who are related within the seventh degree of affinity or consanguinity to a shared common ancestor.

(2) "Family member" means each individual included in the definition of "family," provided that a foster child is considered the child of the foster parent and a person for whom a guardian was appointed before the person's 18th birthday is considered the child of the guardian. The term "family member" also includes the shared common ancestor.

(3) "Key employee" means the president of the trust company, any of its officers in charge of a principal business unit, division or function (such as administration or finance), an officer who performs a policymaking function for the trust company, or another person who performs similar policymaking functions for the trust company.

(b) Application for exemption.

(1) Pursuant to Finance Code, §182.011 and §182.012, a trust company may request in writing that it be exempted from specified provisions of the Trust Company Act, if it has only family clients, transacts business solely on behalf of family clients and their related interests, is wholly owned, directly or indirectly, legally or beneficially, by one or more family members, and does not hold itself out to the general public as a corporate fiduciary for hire.

(2) The application must:

(A) be accompanied by the appropriate filing fee required by §21.2 of this title (relating to Filing and Investigation Fees);

(B) specify the specific exemptions requested and the reasons or justification for requesting the exemptions; and

(C) include a copy of the trust company's certificate of formation containing, or a proposed amendment to the certificate of formation that would cause it to contain, the following statement in its purposes clause: "The sole purpose for which the trust company is organized is to act as a corporate fiduciary for accounts in which all beneficiaries are related within the seventh degree of affinity or consanguinity to _____ (name of common ancestor), and their related interests to the extent permitted by the Texas Finance Code or applicable rules and regulations."

(c) Exemption. Subject to conditions or limitations being imposed by the banking commissioner, a family trust company may request exemption from the following provisions of the Trust Company Act:

(1) the requirement of Finance Code, §183.103(a), that five is the minimum number of directors, managers, or managing participants that can be specified in the certificate of formation, provided that the certificate of formation must specify the number of directors, managers, or managing participants, consistent with paragraph (2) of this subsection;

(2) the requirement of Finance Code, §183.103(a), that the number of directors, managers, or managing participants of a trust company cannot be less than five or more than 25, the majority of whom must be residents of this state, provided that the board of a trust company seeking exemption

under this section must consist of not fewer than three or more than 25 directors, managers, or managing participants, at least one of whom must be a resident of this state;

(3) the restrictions of Finance Code, §183.109(a)-(c), regarding transactions with management and affiliates;

(4) the limitations of Finance Code, §184.002, on investment in trust company facilities;

(5) the limitations of Finance Code, §184.101, on securities investments, provided that the exemption request must address each limitation and the reasons for exemption separately;

(6) the restrictions of Finance Code, §184.102, regarding transactions in state trust company shares or participation shares;

(7) the limitations of Finance Code, §184.003, on other real estate investments; and

(8) the limitations of Finance Code, §§184.201-184.203, regarding lending limit and lease financing transaction restrictions, provided that no loans may be made from a trust company's minimum restricted capital amount.

(d) Notice to applicant. The banking commissioner shall issue a written notice as required by §21.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for

filing, or that the application is deficient and specific additional information is required.

(e) Notice to clients. A family trust company which has been granted an exemption under subsection (c) of this section must provide each family client with a copy of the exemption granted by the banking commissioner. The trust company must maintain an acknowledged receipt of such notice in its files.

(f) Transition period for certain former family clients. Pursuant to Finance Code, §182.011(a-1)(1)(C) and (I), a family trust company may continue providing services to a former key employee or a formerly revocable trust that is no longer an eligible family client for a period of one year after the date of the disqualifying event. The banking commissioner may grant an extension of up to one year in response to a written request if the commissioner determines that:

(1) the trust company has acted diligently and in good faith in its efforts to terminate the disqualified relationship in a manner consistent with its fiduciary duties; and

(2) additional time is needed to avoid harm to the affected beneficiaries and appropriately discharge the trust company's fiduciary duties with respect to the disqualified relationship.

(g) Effect on existing family trust company. A family trust company with exemptions granted prior to September 1, 2015, under Finance Code, §182.011 and §182.012, is not required to take any action to preserve its exemption as a result of

changes in law made by Acts 2015, 84th Leg., R.S., Ch. 250, §5. However, unless and until any such family trust company amends its certificate of formation to name a new shared common ancestor, the control person named in its certificate of formation is considered to be the shared common ancestor for purposes of determining eligibility of family members under Finance Code, §182.011, and this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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10. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to 7 TAC §17.23, Concerning Trust Company Call Reports.

PURPOSE: Amendments to §17.23 revise the section to conform to statutory amendments effective September 1, 2015, made by Sections 3 and 7 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250), to make confidential the statement of condition and income (call report) of an exempt trust company, and to require the trust company's annual certification that it is maintaining the conditions and limitations of its exemption to be submitted with the company's call report.

The amendment to §17.23(b)(2) revises the due date for an exempt trust company to file its call report from January 31 to April 30 of each year. An exempt trust company will now file its call report simultaneously with its annual certification of exempt status, as required by Finance Code §182.013(a).

Section 17.23(f) is amended to incorporate the changes in law regarding confidentiality of call reports. Finally, conforming changes are made in §17.23(g)(2).

RECOMMENDED ACTION: No comments were received regarding the proposed amendments to 7 TAC §17.23. The Department recommends that the Commission approve adoption of the amendments without changes to the proposal as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we adopt the amendments to 7 TAC §17.23 without changes to the proposal as previously published in the *Texas Register*.

***Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Part 2. Texas Department of Banking
Chapter 17. Trust Company Regulation
Subchapter B. Examination and Call Reports
7 TAC §17.23***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §17.23, concerning trust company call reports, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7520), and will not be republished.

Finance Code, §181.107(c) and §182.013(a), were amended effective September 1, 2015 by Sections 3 and 7 of S.B. 875 (Acts 2015, 84th Leg., R.S., Ch. 250, §§3 and 7), which make confidential the statement of condition and income (call report) of an exempt trust company, and require the trust company's annual certification that it is maintaining the conditions and limitations of its exemption to be submitted with the company's call report. The statutory amendments further make clear that these provisions apply to all exempt trust companies, whether exempt under Finance Code §182.011 or §182.019.

The amendment to §17.23(b)(2) revises the due date for an exempt trust company to file its call report to April 30 of each year. An exempt trust company will now file its call report simultaneously with its annual certification of exempt status, as required by Finance Code §182.013(a).

Amended 17.23(f) addresses the confidentiality of call reports.

Finally, conforming changes were made in §17.23(g)(2).

The Department received no comments regarding the proposed amendments.

The amendments are adopted pursuant to Finance Code, §181.003, which authorizes the commission to adopt rules to implement and clarify applicable law, and pursuant to Finance Code §181.107(b)(1), which empowers the commission to adopt rules requiring trust companies to file their statements of condition and income with the banking commissioner at specified intervals.

§17.23. Call Reports.

(a) Call report. As used in this section, the term "call report" means a statement of condition and income and results of operations of a trust company as mandated by the banking commissioner pursuant to Finance Code, §181.107.

(b) Reporting requirements of trust companies.

(1) Public trust companies. Each trust company that transacts business with the public shall file four call reports annually with the banking commissioner. Such call reports must be filed with the banking commissioner no later than April

30, July 31, and October 31 of each year, and by January 31 of the subsequent year.

(2) Exempt trust companies. Each trust company that is exempt pursuant to Finance Code, §182.011 or §182.019 shall file an annual call report with the banking commissioner no later than April 30 of each year relating to the preceding calendar year, accompanied by its annual certification, required by Finance Code, §182.013(a), that the trust company is maintaining the conditions and limitations of its exemption.

(3) Call report forms. The call report forms, the instructions for completing the reports and the accompanying materials will be furnished by the banking commissioner to all trust companies subject to this subsection, or may be obtained upon request from the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294. The banking commissioner may make such modifications and additions to call report form and contents under this subsection as considered necessary in the discretionary discharge of the banking commissioner's duties. A trust company must submit all information requested on the call report form.

(c) Special call reports. In addition to the requirements of subsections (b) of this section, the banking commissioner may require a trust company to file and submit a special call report, in such form and manner and containing such information as may be requested, on dates fixed, whenever in the banking commissioner's discretion the special call report is necessary in the performance of the banking commissioner's supervisory duties related to the safety and soundness of the trust company. Special call

reports must contain only such information as is specifically requested by the banking commissioner.

(d) Call report declarations and attestations. Each call report or special call report required to be filed under subsections (b) and (c) of this section must contain a declaration by an executive officer, or by another officer designated by the board of directors of the trust company to make such declaration, that the report is true and correct to the best of such individual's knowledge and belief. The correctness of the call report or special call report must also be attested by the signatures of at least two of the directors of the trust company other than the officer making the declaration. The declaration of the directors must state that the call report or special call report has been examined by them and is true and correct to the best of their knowledge and belief.

(e) Lobby notice and publication for public trust companies. The latest call report filed with the banking commissioner pursuant to subsection (b) of this subsection or a Notice of Call Report Availability must be posted in the lobby of each trust company that transacts business with the public at a point accessible to the public. A trust company is not required to publish its call report in a newspaper or other media unless specifically directed to do so by the banking commissioner. A trust company required to publish its call report by the banking commissioner shall publish the report in a newspaper or other medium of general circulation as directed by the banking commissioner.

(f) Confidentiality. Call reports filed under subsection (b)(2) of this section are

confidential as provided by Finance Code, §181.107(c)(2). Call reports filed under subsection (b)(1) are public information except for those portions designated as confidential by the banking commissioner, and may be published or otherwise disclosed to the public. Special call reports filed pursuant to subsection (c) of this section and non-public portions of call reports filed pursuant to subsection (b) of this section are confidential, subject only to such disclosure as may be permitted by Finance Code, §§181.301, et seq. or by §3.111 of this title (relating to Confidential Information).

(g) Reports containing significant errors and penalties for failure to file or for filing a report with false or misleading information.

(1) Public trust companies. A trust company that transacts business with the public which fails to make, file, or submit a timely call report or a special call report as required by this section is subject to a penalty not exceeding \$500 a day to be collected by the attorney general on behalf of the banking commissioner.

(2) Exempt trust companies. Failure of a trust company that is exempt pursuant to Finance Code, §182.011 or §182.019 to make, file, or submit a timely call report or a special call report as required by this section is grounds for revocation of its exempt status.

(3) Corrections. Any trust company which makes, files, submits or publishes a call report or special call report which contains a significant error, shall file a corrected call report within 20 days from the date of request. For purposes of this subsection, a significant error refers to any

difference in the report of condition and/or supporting schedules equating to 5.0% or more of total assets, provided the amount is greater than \$50,000, or any difference in the report of income and/or supporting schedules equating to 5.0% or more of total operating income, provided the amount is greater than \$5,000. Any trust company which makes, files, submits or publishes a false or misleading call report or special call report is subject to an enforcement action pursuant to Finance Code, §§185.001, et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §5.101, Concerning Employee Training and Education Assistance Programs.

PURPOSE: Amendment to §5.101 would revise the section to implement a change to the Government Code made effective by H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3). Amendment proposed to §5.101 will require the commissioner of the applicable finance agency to authorize tuition reimbursement for a course at an institution of higher education successfully completed by an employee.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed amendment to 7 TAC §5.101 in the *Texas Register*.

***Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 5. Administration of Finance
Agencies
7 TAC §5.101***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) proposes to amend §5.101, concerning Employee Training and Education Assistance Programs.

Government Code Section 656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is proposed to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

Charles G. Cooper, Commissioner, Texas Department of Banking, Caroline C. Jones, Commissioner, Department of Savings and Mortgage Lending, and Leslie L. Pettijohn, Consumer Credit Commissioner ("the commissioners"), have determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule as amended.

The commissioners have also determined that, for each year of the first five years the amendment as proposed is in

effect, the public benefit anticipated as a result of amending the rule is that the agencies' policies for tuition reimbursement will demonstrate greater oversight and accountability.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 21, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed pursuant to Finance Code, §5.101, which provides for training and education assistance to employees of the finance agencies.

Finance Code, §5.101, is affected by the proposed amended section.

§5.101. Employee Training and Education Assistance Programs.

(a) – (f) (No change.)

(g) In order to receive tuition reimbursement for a course offered by an institution of higher education, the employee must successfully complete the course, and the executive head of the finance agency must personally authorize the tuition reimbursement payment.

12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendment to 7 TAC §33.13, Concerning How Do I Obtain a New License?

PURPOSE: Amendment to §33.13 would revise the section to clarify that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish proposed amendment to 7 TAC §33.13 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes amendments to §33.13, concerning how to obtain a new money services business license. The amended rule is proposed to clarify that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The department proposes two amendments to §33.13 to provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. Currently, Section 33.13(a) explains that the section applies to applicants seeking a new money transmission or currency exchange license under Finance Code, Chapter 151. The first change establishes that the time

tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. The department also proposes an amendment to the title of §33.13 to clarify that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is that both regulated entities and department analysts will have clarity on the timeframe for change of control approvals. This will produce greater efficiencies for regulated entities and the department.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses.

To be considered, comments on the proposed amendment must be submitted no later than 5:00 p.m. on January 21, 2016. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendment is proposed under Finance Code, §151.102(a)(1), which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to implement and clarify Chapter 151.

Finance Code, §151.605, is affected by the proposed amended section.

§33.13. How Do I Obtain a New License and What are the Deadlines Associated with Applications? (a) Does this section apply to me? This section applies if you seek a new money transmission or currency exchange license under Finance Code, Chapter 151. The time tables and deadlines established in this section also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151.

(b) – (j) (No change.)

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A.

Finance Commission Matters (cont'd)

Finance Commission Agencies Tentative Strategic Planning Timeline

Date	Action
December 2015	Begin Strategic Planning process internally with staff
January – March 2016	Workforce Analysis Goals and Performance Measures
January – March 2016	Customer Service Survey Survey of Employee Engagement
January – March 2016	Technology Resource Planning
January – February 2016	Stakeholder meetings
March 2016	Drafting
Early April 2016	Provide draft to Strategic Planning Committee and receive feedback
Early May 2016	Make edits and revisions as necessary
Early June 2016	Submit strategic plan draft for Finance Commission materials
June 9, 2016	Strategic Planning Committee final review of agencies strategic plans
June 10, 2016	Strategic plans are submitted to Finance Commission for approval at their meeting
Late June 2016	Submission of final plan to state leadership

Finance Commission Policies and Procedures

(updated ~~October 2014~~ [December 2015](#))

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STRATEGIC PLANNING

Statute

Section 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN.

(a) The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) The finance commission shall prepare and periodically update a strategic plan for coordination of the state financial system. Each finance agency shall cooperate in preparation of the plan.

Policy Statement

The Finance Commission recognizes the benefit of sound short-term and long-term planning and the need to provide oversight for the regulatory responsibilities of each Finance Commission agency (Finance agency) in a manner intended to protect the integrity of the state's financial system as well as to promote economic prosperity. In this regard, the Finance Commission will prepare and adopt a five-year strategic plan each biennium. Revisions and updates to the plan are permitted, but shall be limited to items that are material in nature and that will result in significant changes to the goals and objectives of the Finance Commission.

The Chair of the Finance Commission will appoint three members to serve on a Strategic Planning Committee. The Strategic Planning Committee shall be responsible for the oversight of the preparation and update of the strategic plan so that it encompasses the goals and objectives of the Finance Commission. The plan will embody the high level goals, objectives and discussions of the Finance agency plans.

PRESIDING OFFICER

Statute

Section 11.107. PRESIDING OFFICER.

- (a) The governor shall appoint a member of the finance commission as presiding officer of the commission. The presiding officer serves at the will of the governor.
- (b) The presiding officer shall preside at and provide for the keeping of minutes of each public meeting of the finance commission.
- (c) The presiding officer may:
 - (1) adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner;
 - (2) adopt internal procedures governing the time and place of meetings, the type of notice for special public meetings, the manner in which public meetings are to be conducted, and other similar matters; and
 - (3) appoint committees composed of finance commission members as the presiding officer considers necessary to carry out the commission's business.

Policy Statement

Meetings of the Finance Commission will be conducted with decorum and respect for all parties attending and appearing before the Commission. In furtherance of providing for the orderly operations of the Commission, the presiding officer (Chair) may designate a Vice-Chair. In the Chair's absence, the Vice-Chair will conduct and complete all business before the Commission in accordance with applicable statutes, proper open meeting protocols and these Finance Commission policies. The rules contained within the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these policies and any special rules the Finance Commission may adopt.

In furtherance of Section 11.103(a)(5), Texas Finance Code, each member of the Commission shall notify the Chair of an expected absence from a meeting of the Commission as soon as practicable after learning of the events that will cause the absence. The member shall also notify the Chair of the reasons for the expected absence. At the meeting where the member is absent, the Chair shall call for a vote of all members in attendance on whether the absence is excused.

The Chair will assign members to the Finance Commission committees. Standing committees are the Audit Committee, the Study Committee, and the Strategic Planning Committee. Committee membership will be

assigned or reaffirmed annually, to become effective September 1, upon member replacement, or as the Chair determines necessary or appropriate. Each committee's membership will normally be, but is not required to be, comprised of three members. From a committee's membership, the Chair will designate a Chairperson for each committee. All considerations of a committee, other than adoption of minutes, are recommendations for full Finance Commission action.

The Chair of the Finance Commission shall appoint members to serve on ad hoc committees as the need arises. The Chair shall designate a Chairperson for each such committee.

The Chair and Vice-Chair of the Finance Commission serve in an *ex officio* non-voting capacity on each standing committee and each ad hoc committee. However, when the Chairperson of a committee learns that one or more members of a committee will be unable to attend a scheduled meeting such Chairperson may request that either the Chair or Vice-Chair of the Finance Commission (or both if more than one member will be absent) serve on the committee in a voting capacity on a one-time basis at the scheduled meeting. The minutes of the scheduled meeting shall reflect the actual voting membership of the committee.

The Chair will designate ~~one or more~~ Commission members to coordinate the annual evaluation process of the three Finance agency commissioners. This ad hoc committee will include at least one public member and three industry members (one industry member representing each Finance agency).

The Finance Commission reserves to itself as a body the responsibility for passing upon and prescribing the manner of communication of matters of policy which represent the official position of the Finance Commission. Accordingly, it would be inappropriate for individual members to communicate official positions of the Finance Commission unless instructed or authorized to do so by an action of the Commission.

The Audit Committee shall be responsible for:

- providing oversight of the Finance agencies' internal audit function, including:
 - interviewing and recommending the selection of an internal auditor,
 - reviewing and recommending the actions to be taken as a result of the annual risk assessments performed by the internal auditor,
 - reviewing, with the internal auditors, the audit scope and plan of the internal auditors,
 - reviewing and recommending the actions to be taken on the audit plan resulting from the annual internal audit reports, including management's responses thereto, and monitoring the Finance agencies' corrective actions.
- reviewing and monitoring the action plans resulting from external audits conducted by state and federal agencies, including management's responses thereto, and monitoring the Finance agencies' corrective actions.
- reviewing and recommending the actions to be taken if any on the annual operating budgets, quarterly financial statements, and investment reports of the Finance agencies.

- Providing oversight and administration of the Texas Financial Education Endowment, including recommending the actions to be taken on the investment of funds and awarding of grants that support the objectives of the endowment.

A Certified Public Accountant member of the Finance Commission shall be appointed as a member of the Committee unless specifically excluded by a majority vote of the Finance Commission.

The Study Committee shall be responsible for:

- coordinating and reviewing any statutorily-required or authorized research studies or projects decided to be undertaken, as well as those determined to be necessary by the Finance Commission.
- monitoring and overseeing Legislative Interim Studies as appropriate.
- monitoring and overseeing activities related to the self-directed, semi-independent (SDSI) status of the Finance agencies by conferring with the Finance agencies on material interests, issues and matters related to SDSI status, as well as monitoring general reporting requirements to governing bodies and the state legislature associated with the SDSI status, and exploring additional strategies with Finance agency heads regarding implementation and operational policies related to SDSI status.
- reviewing and making recommendations for updates to the policies and procedures of the Finance Commission every biennium.
- monitoring the Sunset Review process as appropriate, for the Finance Commission and its Finance agencies.

On recommendation of the Finance agencies or as required by law, the Study Committee may conduct research on:

- The availability, quality and prices of financial services, including lending and depository services offered to agricultural businesses, small businesses, and individual consumers in this state, and
- The practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

The Strategic Planning Committee shall be responsible for:

- providing direction for and review of the strategic plans developed by each of the Finance agencies under the Finance Commission.
- defining the scope and development of the Finance Commission's strategic plan ensuring alignment with legislative mandates, industry and economic indicators, and Finance agency strategic plans.
- playing an active role in legislative hearings and communications with elected officials.
- overseeing the selection of ~~and annual evaluation process of~~ the Finance agency heads.

STANDARDS OF CONDUCT

Statute

Section 11.109. STANDARDS OF CONDUCT.

The presiding officer of the finance commission or the presiding officer's designee shall provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

Policy Statement

Subchapter C, Chapter 572, Texas Government Code, specifically addresses **Standards of Conduct and Conflict of Interest** for state officers and employees. Members of the Finance Commission are committed to following these guidelines and abiding by the provisions therein. Portions of the statute applicable to Finance Commission members are found in [Exhibit A](#). Pursuant to §572.051, Texas Government Code the Finance Commission and each of the Finance agencies under its jurisdiction has adopted an ethics policy.

If a member of the Finance Commission or a Finance agency commissioner is made aware of a potential conflict of interest involving a member of the Finance Commission or a Finance agency commissioner as such conflicts are described in Exhibit A to these Policies and Procedures, it is the duty of that person to report the matter to the Chair of the Finance Commission, the Chair of the Audit Committee, and the Chair of the Strategic Planning Committee. The Chair of the Finance Commission, two committee Chairs, or a majority of the Finance Commission at a properly posted Finance Commission meeting may engage as deemed appropriate the services of one or more of the Office of the Attorney General, independent counsel (through prescribed procedures), its internal auditors, and/or the Office of the State Auditor to determine and report to the Finance Commission for its consideration the relevant facts and circumstances surrounding the potential conflict of interest.

Exhibit A

Standards of Conduct

Subchapter C, Chapter 572, Texas Government Code, is headed "STANDARDS OF CONDUCT AND CONFLICT OF INTEREST PROVISIONS." It contains sections that are only applicable to members of the Legislature and these sections have been omitted.

The following sections of Subchapter C are applicable to the Finance Commission:

§ 572.051. Standards of Conduct; State Agency Ethics Policy

(a) A state officer or employee should not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

(1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and

(2) distribute a copy of the ethics policy and this subchapter to:

(A) each new employee not later than the third business day after the date the person begins employment with the agency; and

(B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

§ 572.054. Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense

(a) A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:

(1) with the intent to influence; and

(2) on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary

group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(d) Subsection (b) does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.

(e) Other law that restricts the representation of person before a particular state agency by a former state officer or employee of that agency prevails over this section.

(f) An individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor.

(g) In this section, the comptroller and the secretary of state are not excluded from the definition of "regulatory agency."

(g-1) For purposes of this section, the Department of Information Resources is a regulatory agency.

(h) In this section:

(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

§ 572.056. Contracts by State Officers With Governmental Entities; Criminal Offense

(a) A state officer may not solicit or accept from a governmental entity a commission, fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to a governmental entity.

(b) This section does not apply to:

(1) a contract that is awarded by competitive bid as provided by law and that is not otherwise prohibited by law; or

(2) a court appointment.

(c) In this section, "governmental entity" means the state, a political subdivision of the state, or a governmental entity created under the Texas Constitution or a statute of this state.

(d) A state officer who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.

§ 572.057. Certain Leases Prohibited

(a) Except as provided by Subsection (d), a member of the legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest may not lease any office space or other real property to the state, a state agency, the legislature or a legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency.

(b) A lease made in violation of Subsection (a) is void.

(c) This section does not apply to an individual who is an elected officer on June 16, 1989, for as long as the officer holds that office.

(d) A member of the legislature or a business entity in which the legislator has a substantial interest may donate the use of office space that the member or entity owns and that is located in the member's district to the house of the legislature in which the member serves to be used for the member's official business. Office space donated under this subsection is not a contribution for purposes of Title 15, Election Code. Acceptance of a donation of office space under this subsection is not subject to Section 301.032.

§ 572.058. Private Interest in Measure or Decision; Disclosure; Removal From Office for Violation

(a) An elected or appointed officer, other than an officer subject to impeachment under Article XV, Section 2, of the Texas Constitution, who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with Chapter 551. The officer may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

(b) An individual who violates this section is subject to removal from office on the petition of the attorney general on the attorney general's own initiative or on the relation of a resident or of any other member of the board or commission. The suit must be brought in a district court of Travis County or of the county where the violation is alleged to have been committed.

(c) If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known the individual's conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.

(d) A suit under this section must be brought before the second anniversary of the date the violation is alleged to have been committed, or the suit is barred.

(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the Texas Constitution or a statute of this state.

(f) In this section, "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if

the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.

§ 572.060. Solicitation Of Or Recommendations Regarding Contributions To Charitable Organizations And Governmental Entities

(a) Unless otherwise prohibited by the Code of Judicial Conduct, a state officer or state employee may:

(1) solicit from any person a contribution to:

(A) an organization that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(ii) does not attempt to influence legislation as a substantial part of the organization's activities; and

(iii) has not elected under Section 501(h), Internal Revenue Code of 1986, to have that subsection apply to the organization; or

(B) a governmental entity; or

(2) recommend to any person that the person make a contribution to an organization or entity described by Subdivision (1).

(b) A monetary contribution solicited or recommended as provided by Subsection (a) must:

(1) be paid or made directly to the charitable organization or governmental entity by the person making the contribution;

(2) be in the form of a check, money order, or similar instrument payable to the charitable organization or governmental entity; or

(3) be in the form of a deduction from a state employee's salary or wage payment under the state employee charitable campaign under Subchapter I, Chapter 659.

(c) A contribution solicited or recommended as provided by Subsection (a) that is not a monetary contribution must be delivered directly to the charitable organization or governmental entity by the person making the contribution.

(d) A contribution paid as provided by Subsection (b) or delivered as provided by Subsection (c) is not:

(1) a political contribution to, or political expenditure on behalf of, the state officer or state employee for purposes of Title 15, Election Code;

(2) an expenditure for purposes of Chapter 305; or

(3) a benefit to the state officer or state employee for purposes of Sections 36.08 and 36.09, Penal Code.

ETHICS POLICY

Statute

Section 572.051. STANDARDS OF CONDUCT; STATE AGENCY ETHICS POLICY.

(a) A state officer or employee should not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;
- (2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;
- (3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;
- (4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or
- (5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

- (1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and
- (2) distribute a copy of the ethics policy and this subchapter to:
 - (A) each new employee not later than the third business day after the date the person begins employment with the agency; and
 - (B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

Note:

Under §572.051(d), the term “commission” means the Texas Ethics Commission. Under §572.051(e), Subchapters E and F, Chapter 571, Texas Government Code (made inapplicable to a violation of this Section) set out respectively the procedures (including hearings) for dealing with certain complaints by the Texas Ethics Commission and the institution by the Texas Ethics Commission of civil and enforcement procedures related to certain alleged violations of law.

Policy Statement

I. OVERVIEW

Pursuant to Section 572.051(c) of the Texas Government Code, the Finance Commission promulgates the following ethics policy. This ethics policy prescribes standards of conduct for all Finance Commission members. This ethics policy does not supersede any applicable federal or Texas law or administrative rule. All Finance Commission members must familiarize themselves with this ethics policy. All Finance Commission members must abide by all applicable federal and Texas laws, administrative rules, and Finance Commission conduct policies, including this ethics policy. A Finance Commission member who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties.

II. ETHICS POLICY

A. A Finance Commission member shall not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member in the discharge of official duties, or that the member knows or should know is being offered with the intent to influence the member's official conduct;

(2) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(3) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Tex. Gov't Code Ann. Ch. 552), or information that has been ordered sealed by a court, that was acquired by reason of the member's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the member might reasonably expect would require or induce the member to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the member's official position;

(4) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the member's independence of judgment in the performance of the member's official duties (Notwithstanding anything herein to the contrary, it is expected that members who are industry representatives will continue or accept employment that enables them to meet the qualifications required under Finance Code §11.102, relating to Qualifications of Members of the Texas Finance Commission);

(5) utilize state personnel, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state, interfere with the member's official duties, and interfere with Finance Commission functions;

(6) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(7) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(8) utilize state resources for any political activity.

B. A Finance Commission member shall:

(1) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Finance Commission; and

(2) pursuant to the STANDARDS OF CONDUCT policy, report any conduct or activity that the member believes to be in violation of this ethics policy to the Chair of the Finance Commission, the Chair of Audit Committee, and the Chair of the Strategic Planning Committee.

C. Routinely in the performance of their duties as members of the Finance Commission, industry-representative members are required to vote on rules and take other actions that will have an impact on the industry they represent. Therefore, such cases are not conflicts of interest under this policy. However, if there is to be action on a matter that is specific to the Finance Commission member's employer or to an institution

in which the Finance Commission member has a substantial interest as described in §572.005 Texas Government Code, then the member must not participate in the action and shall recuse herself or himself from deliberating or voting on the matter.

TRAINING

Statute

Section 11.110. TRAINING.

(a) A person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

- (1) the legislation that created the finance agencies and the finance commission;
- (2) the programs operated by the finance agencies;
- (3) the role and functions of the finance agencies;
- (4) the rules of the finance commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget of the finance agencies;
- (6) the results of the most recent formal audit of the finance agencies;
- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the finance commission or the Texas Ethics Commission.

(c) A person appointed to the finance commission is entitled to reimbursement under Section 11.104, as if the person were a member of the finance commission, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Policy Statement

Finance Commission members acknowledge that state service is a privilege and duty that requires dedication and proper training. In this regard, members of the Finance Commission adopt the following training program that shall be administered by representatives of the Finance agencies. The three Finance agency commissioners will serve as the Finance Commission Training Committee. The Training Committee is charged with developing and preparing appropriate training material for new Finance Commission members that at a minimum includes items found in section 11.110 (b) of the Finance Code.

Periodically, the Training Committee shall revise and update the training material so that its content is consistent with applicable statutory rules and regulations.

The Training Committee will provide classroom instruction to new Commission members as soon after appointment as possible, but not later than the first scheduled meeting of the Finance Commission after their appointment. The Training Committee may utilize the expertise of other state agencies in providing this training, including the areas of ethics, conflicts of interest, and open government.

The Finance agencies will keep the Finance Commission members apprised of changes or developments in the law and recommend related training, if deemed appropriate.

SEPARATION OF FUNCTIONS

Statute

Section 11.111. SEPARATION OF FUNCTIONS.

The finance commission shall develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities of the banking commissioner, savings and mortgage lending commissioner, and consumer credit commissioner and staff of the finance agencies.

Policy Statement

The Finance Commission is responsible for, but not limited to, implementing policies through its rulemaking authority carried out in accordance with the Administrative Procedures Act, Texas Government Code, Chapter 2001. The Finance Commission shall develop procedures to provide oversight and coordination of the Finance agencies including new legislative mandates and needs for statutory change.

The commissioners of the Finance agencies are responsible for managing staff and carrying out the administrative duties and statutory responsibilities of their Finance agencies. The Finance Commission may offer advice and direction to the commissioners.

Under the direction of the commissioners, the staff of the Finance agencies is responsible for managing programs that supervise and regulate entities in accordance with applicable statutes and Finance Commission rules. Confidential information of the Finance agencies may not be released to Finance Commission members, however, a file or record pertinent to a hearing or matter pending before the Finance Commission may be provided to the members.

The Finance Commission must remain adequately informed of activities occurring with respect to legislation affecting the Finance Commission or the Finance agencies. Given the rapid pace and fluidity of the legislative process, hard and fast procedures are difficult to develop and implement. Legislative reporting will include the following:

Legislation Activity Reporting

The Finance agency commissioners will email the Finance Commission members a weekly update during the legislative session. The report will list recently filed legislation or developments with respect to previously filed legislation that proposes to or amends laws over which the Finance Commission or a Finance agency has jurisdiction or impacts the Finance Commission or its Finance agencies. The information should include an overview of the legislation, the author, and how the bill would affect the Finance agency or the affected regulated area.

Weekly updates would include any recent action on a bill previously reported in addition to other new legislation. If a bill is no longer viable due to legislative deadlines or other action, that fact shall also be reported and the bill removed from future reporting.

Testimony

The Finance agency commissioners will send an email notice to the Commission members when they are requested to testify or appear as a resource witness for a legislative committee. During session the weekly update may include these scheduled appearances. If written testimony is to be provided, when it is available it will be forwarded to Commission members.

Agency Resource Information

The Finance agency commissioners and their staff are routinely consulted on issues regarding pending or potential legislation. Oftentimes, these communications are informal and merely informational in nature. Many legislators involved in these communications expect and request confidentiality regarding their requests. The Finance agency heads will strive to report requests for legislative assistance in areas of substantial concern while balancing the need for confidentiality and maintenance of effective working relationships. Finance agency commissioners will maintain effective working relationships with the legislature by balancing confidentiality requests and appropriate reporting to the Finance Commission.

Legislative Communications with Finance Commission Members

Finance Commission members who communicate with legislators regarding legislation that impacts the Finance Commission agencies or an affected area of regulation should strive to inform the rest of the Finance Commission regarding the nature of the communication.

PUBLIC TESTIMONY

Statute

Section 11.112. PUBLIC TESTIMONY.

The finance commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

Policy Statement

Public Input on Non-Agenda Items

Time will be set aside in regular meetings of the Finance Commission for the public to comment on any subject that is not a scheduled item on the agenda except for public testimony regarding an outstanding rule proposal for which the public comment period has expired. Persons wishing to comment must state their name and who they represent for the record. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than five minutes.

Public Input on Agenda Items

Time will be set aside in regular meetings of the Finance Commission for the public to comment on agenda items. Persons wishing to comment must state their name and who they represent for the record. If multiple persons from an organization or affiliated group are present, one representative must be designated to speak on behalf of that organization or group. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than ten minutes.

Public input is allowed on rule proposals before the Finance Commission where the Finance Commission is considering publication for comment or during the official comment period.

Public comment will not be allowed on agenda items related to final rule adoptions except upon majority vote of the commission, in which case comments will be limited to five minutes.

Public Input on Rules Before the Commission

The Finance agencies will provide time for public comment (written or oral) on all proposed rules by:

- Seeking pre-publication informal public comment by interested parties;
- Posting notice of the rule proposal in accordance with the Open Meetings Act, with notice in the *Texas Register*, for the date and time at which the Finance Commission will discuss and vote whether to officially publish the rule proposal for public comment. With the rule proposal at this stage, the Finance Commission will provide for and consider public comments in its deliberations.

- Posting notice of the rule proposal for a minimum of 30 days, or longer if directed by the Finance Commission, in the *Texas Register* following commission action to post for public comment; or
- Posting notice of and holding a special meeting at which public comment is received on a proposed rule.

HEARINGS OFFICER AND AUDITOR

Statute

Section 11.202. HEARINGS OFFICER AND AUDITOR.

(a) The finance commission shall direct a finance agency to employ an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies.

(b) The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's duty is to preside over matters related to contested cases before a finance agency or the finance commission.

Section 11.203. LIMITATION ON DIRECTION OF AUDITOR.

The internal auditor reports to the finance commission and is not subject to direction by the employing finance agency.

Policy Statement

Hearings Officer

The Finance agencies may contract with [the State Office of Administrative Hearings](#) or a third-party for administrative law judge and hearings officer services to preside over contested cases brought before the Finance Commission or one of the Finance agencies. The contracted party must be a licensed attorney in good standing with the state bar and have experience presiding over administrative hearings or presiding over hearings as a judge or master of a court.

Audit

The Finance Commission, through the Audit Committee, supervises the internal auditor engaged to audit the Finance agencies. The internal auditor may be an external public accounting firm. Audits shall address areas as designated by the Finance Commission based upon statute, risk assessments or other concerns.

SHARING OF STAFF, EQUIPMENT, AND FACILITIES: ALLOCATION OF COSTS

Statute

Section 11.204. SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS.

(a) The finance commission shall use the staff, equipment, and facilities of the finance agencies to the extent necessary to carry out the finance commission's duties. To reduce administrative costs, the finance agencies shall share staff, equipment, and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility.

(b) An interagency agreement must provide that the cost of staff used by the finance commission, including the internal auditor, is to be charged to the finance agencies in proportion to the amount of each agency's business. All other costs of operation of the finance commission are to be shared by and included in the budgets of the finance agencies in proportion to the amount of cash receipts of each of those agencies.

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

Policy Statement

On or before September 1 of each year, the Finance agencies shall enter into an interagency agreement that proportionally distributes all costs incurred by the Finance Commission or by one or more of the Finance agencies in administering the affairs of the Finance Commission. Costs shall include travel and expense reimbursements of the Finance Commission members along with administrative costs of one or more of the Finance agencies including personnel time, copying, and facilities.

The Finance Commission shall appoint one of the Finance agency commissioners as the executive director of the Finance Commission to facilitate the oversight of Finance Commission activities and shared resources of the Finance agencies. The Finance Commission shall review the appointment, the term of the appointment and possible reassignment of the appointment every two years, as well as review the executive director's performance annually when the Finance agency commissioners are reviewed. The executive director shall supervise, support, and coordinate the activities of the Finance Commission and activities jointly engaged in by the Finance agencies, including:

- meetings of the Finance Commission;
- shared personnel, equipment, and building resources of the Finance agencies;
- requests for information or reports;
- activities of Finance Commission committees;

- permanent records of the Finance Commission; and,
- other duties and responsibilities as assigned by the Finance Commission or its Chair.

The executive director for the Finance Commission will act as facilitator and coordinator on Finance Commission and joint Finance agency matters. The associated costs for the executive assistant and any salary supplement amount for the executive director will be equally allocated among the Finance agencies. As each commissioner retains their own substantive responsibilities that relate to the Finance Commission, these duties are considered offsetting as to their costs. The Finance agencies will allocate by interagency agreement those substantive costs of shared operations (e.g., building maintenance, Finance Commission administrative assistant, and utilities).

RESEARCH

Statute

Section 11.305. RESEARCH.

(a) The finance commission shall instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in this state. The program shall:

- (1) study and report on the problem of high-cost lending, including without limitation the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state;
- (2) evaluate alternatives to high-cost lending and the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state;
- (3) develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans; and
- (4) track the location of lenders who enter into loan contracts providing for an interest charge authorized by Section 342.201, map the location of the lenders by senatorial district and by any other appropriate areas, provide other demographic information relating to the loans and the location of the lenders, and provide information on the changes in the distribution of the lenders from 1997 through the date of the report.

(b) The program may:

- (1) apply for and receive public and private grants and gifts to conduct the research authorized by this section;
- (2) contract with public and private entities to carry out studies and analyses under this section;
- (3) provide funding for pilot programs; and
- (4) make grants to nonprofit institutions working to provide alternatives to high-cost loans.

(c) Not later than December 1 of each year, the consumer credit commissioner shall provide to the legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

(d) The Texas Department of Banking and the Department of Savings and Mortgage Lending shall jointly conduct a continuing review of the condition of the state banking system. The review must include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the

results of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

Section 11.3055. FINANCIAL SERVICES STUDY.

(a) The finance commission may assign the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner to conduct research on:

(1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and

(2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

(b) The banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section; and

(2) contract with public and private entities to carry out studies and analyses under this section.

Policy Statement

Research

From time to time, the Chair of the Finance Commission may appoint one or more of the commissioners of the Finance agencies the responsibility of coordinating and conducting research on the availability, quality, and prices of financial services as prescribed in Section 11.3055(a), Texas Finance Code, during the ensuing year.

The Study Committee of the Finance Commission shall decide on the nature of any of the above research studies or projects after considering relevant economic and legislative factors affecting the agricultural, small business and consumer financial systems in the state. The Study Committee's recommendation shall be presented to the Finance Commission which is responsible for approving the final nature or type of research or study projects. The Study Committee may also consider the prior reports issued and any resource or funding limitations in its consideration of future studies or projects.

Reporting

Pursuant to §11.305 (c), and TEX. CONST. art. XVI, §50(s), the Consumer Credit Commissioner shall issue a report no later than December 1 of each year providing information on the availability, quality, and pricing of financial services with a specific emphasis on home equity lending activity.

Pursuant to §11.305 (d), ~~in October and April of each year,~~ the Texas Department of Banking and the Department of Savings and Mortgage Lending shall periodically issue a joint report to the Finance Commission describing the following:

1. the financial condition of the state banking system, including but not limited to, a comparison to national and regional trends and conditions;
2. an analysis of relevant national and state economic forecasts;
3. an analysis of changing banking practices and their impact upon the state's banking system;
4. a summary analysis of enacted and proposed major financial services legislation and the probable effects upon the state's financial institutions; and
5. a forecast of the condition and composition of the state's banking system within the next 12 month period.

CASH RESERVES POLICY

Policy Statement

The long-term financial stability and health of the Finance agencies requires a cash reserve policy to ensure that the Finance agencies preserve the capacity to provide adequate regulatory oversight in the event of unforeseen financial shortages. The Finance agencies must maintain adequate levels of cash reserves (fund balance, free of restrictions, commitments and assignments) for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation of the industries and services provided to Texas citizens. As self-directed, semi-independent Finance agencies, it is essential that this reserve policy provide accountability and transparency in guiding the Finance agencies in setting goals and terms and conditions for cash reserves. Adequate levels of cash reserves should serve to position the Finance agencies to respond to increases in the need for regulatory action, avoid cash flow stress, make planned capital purchases and generally maintain financial flexibility and plan for future needs.

Reserve funds are accumulated from the Finance agencies' operating revenue streams. The amount of cash reserves for each Finance agency will differ depending on the Finance agency's predictability of revenues, volatility of expenditures, liquidity and timing of cash flows, and perceived exposure to significant one-time outlays.

Cash reserve funds should prudently include amounts for, but not be limited to:

1. contingency FTE(s) – amounts necessary to employ and retain additional staff as needed to address rapid growth in the regulated industries, increased incidents of regulatory and supervisory concerns regarding compliance or safety and soundness, state or federal mandates, or any other events that may occur in the industries under the Finance agencies' jurisdiction to the extent that additional staff is needed to maintain adequate regulation of the industries,
2. immediate capital outlays, including amounts for the building issues or maintenance,
3. any other necessary amounts to manage risk and cash flow or maintain adequate levels of regulation and services, including legal and other professional services, and employee payments, and
4. at least two, but no more than six, months of operating expenditures.

Unassigned funds may be assigned and reserved for a specific purpose, such as for capital expenditures or the acquisition of information technology. These funds may be assigned and set aside across more than a single fiscal year as budgeted and approved. Assigned funds are not calculated within the unassigned operating reserve ratio.

The amounts included in the cash reserve are based on each Finance agency's best estimate and should be reviewed and adjusted annually by Finance agency's staff. Measurement of the level of cash reserves should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much emphasis upon the level of unrestricted fund balance at any one time. Cash reserve balances as well as any

specific plans to increase or decrease the level of these reserves should be reported quarterly to the Finance Commission.

Finance Commission of Texas Expense Reimbursement Policy

The Finance agencies are self-directed, semi-independent agencies. As such, the Finance agencies and the commission are not subject to the provisions of the General Appropriations Act that set limitations on rates of reimbursement for travel. The Finance Commission and its Finance agencies require a formal policy to guide the rates of reimbursement for travel.

Statute

Section 11.104. EXPENSES AND COMPENSATION OF MEMBERS.

A member of the finance commission is entitled to:

- (1) the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties; and
- (2) a per diem for each day that the member engages in the business of the finance commission.

Policy Statement

The Finance Commission believes that its members should be reimbursed for reasonable expenses incurred in connection with the members performing their Finance Commission duties.

Finance Commission members may claim reimbursement of out-of-pocket expenses in accordance with this policy for official state Finance Commission business. Reimbursement for expenses related to attendance at events on behalf of the Finance Commission, other than Finance Commission meetings, require advance approval of the Finance Chairman. It is generally the policy of the Finance Commission to conserve funds to the extent possible by approximating the standard state limitations on travel unless specific circumstances warrant an exception. The Finance Commission encourages its members to minimize the amount of travel expenses incurred by ensuring that each travel arrangement is cost-effective considering all relevant circumstances.

(a) Meal reimbursement. Commission members may be reimbursed for actual expenses for meals not to exceed the maximum meal rates based on the federal travel regulations, as announced by the Comptroller. Alcohol and gratuity are not reimbursable expenses.

(b) Lodging reimbursement. Commission members should be guided by the maximum lodging rates based on the federal travel regulations and should use reasonable efforts to obtain a state rate. If a state rate is not available, a Commission member may be reimbursed for lodging at a rate of \$150 or the current federal city travel regulation rate per night, whichever is greater, exclusive of incidental expenses such as occupancy taxes and service fees.

(c) Transportation. Commission members may be reimbursed for transportation expenses, including:

(1) Personal motor vehicle. For the Commission member's use of a personally owned or leased motor vehicle, the mileage reimbursement rate equals the maximum fixed mileage allowance specified in the revenue rulings issued by the Internal Revenue Service under the federal income tax regulations as announced by the Comptroller. Mileage may be reimbursed, for instance, in conjunction with Finance Commission business, including travel to and from home and office, to and from the airport and to and from the location of any Finance Commission related meeting.

(2) Airfare and rental car. Commission members may be reimbursed for actual expenses for airfare and rental car expenses. A member should use reasonable efforts to obtain state contract rates, if available.

(d) Incidental expenses. A Commission member may be reimbursed for actual incidental expenses.

Reimbursement shall be subject to the Finance Commission member completing appropriate expense reimbursement forms and providing the Finance Commission receipts or other reasonable acceptable evidence of costs incurred.

The Chairman of the Finance Commission shall have the power to interpret, construe and implement this policy. In the absence of the Chairman, or in consultation with the Chairman, the Executive Director may exercise such power. This policy may be amended by simple majority vote of the entire Finance Commission.

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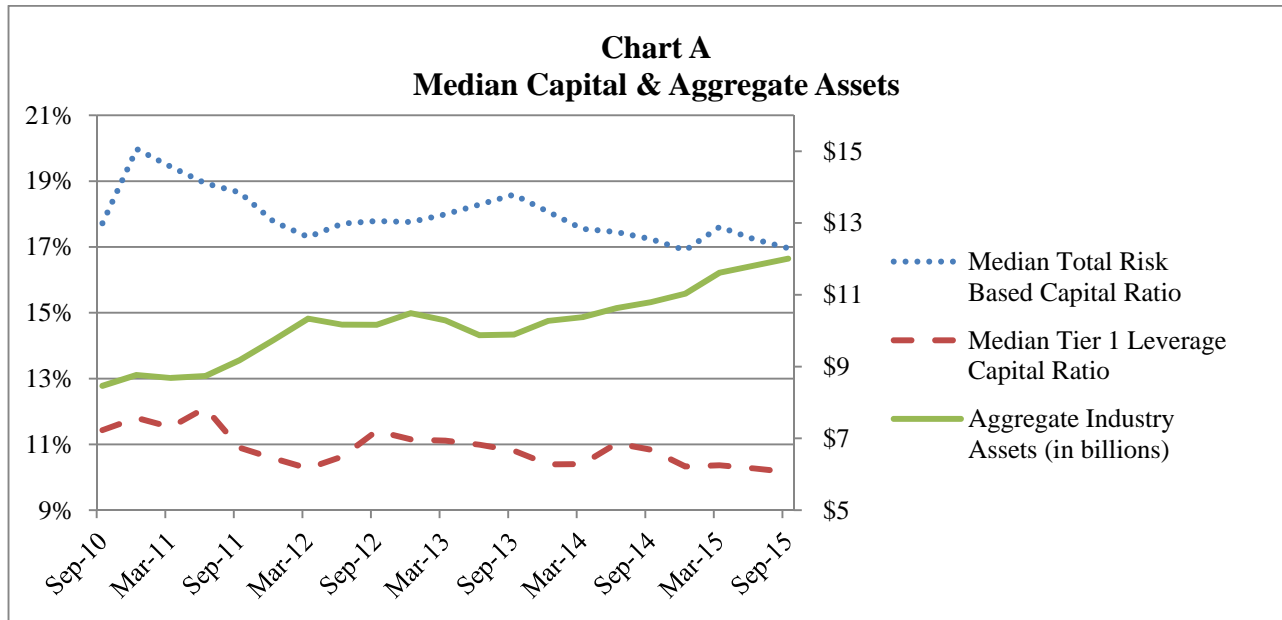
C.

**Department of Savings
and
Mortgage Lending**

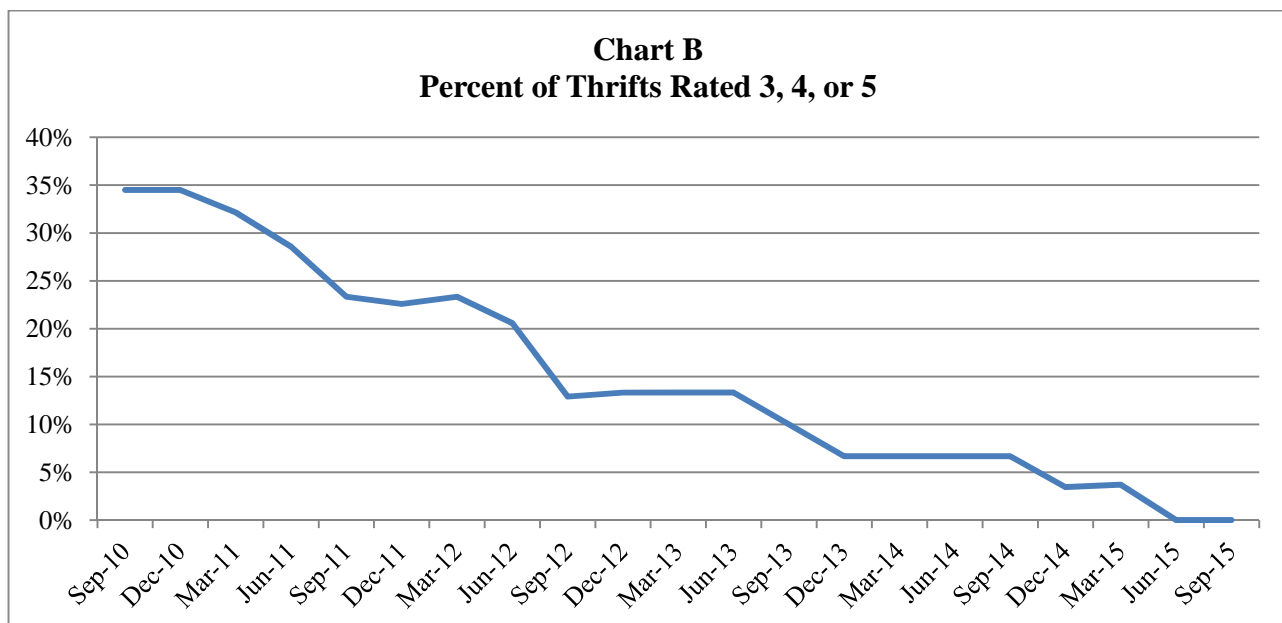
C. Texas Department of Savings and Mortgage Lending

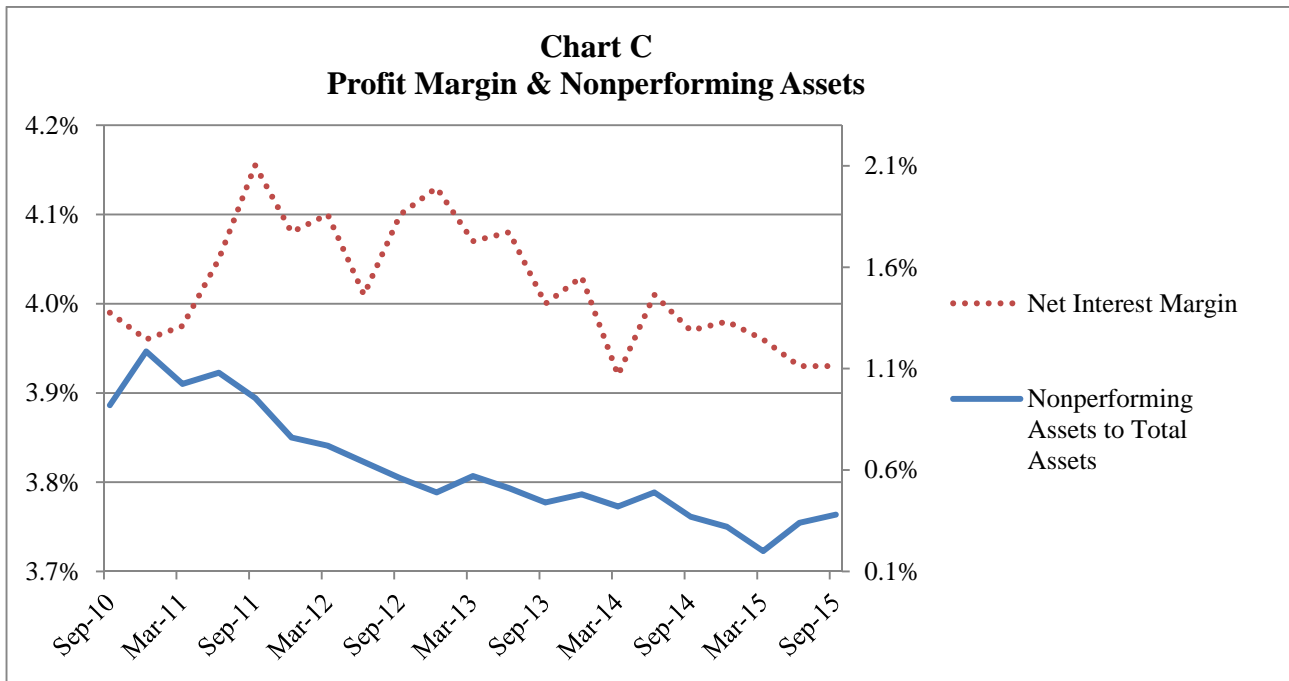
1. Industry Status and Departmental Operations – State Savings Bank Activity:

a. Industry Status



There are 27 state savings banks totaling \$12.0 billion in total assets. All are rated a Composite 1 or 2, with no outstanding public enforcement actions. The average asset size of the median state savings bank grew by 15% in the twelve months ending September 30, 2015, to \$304 million. This continues a 3.5 year growth trend in the industry. The net interest margin (profit margin) has decreased slightly to 3.93% from 3.97% over the past year, also continuing a 3-year trend. Nonperforming asset levels remain below pre-crisis levels at 0.38% of total assets. As a result of increased lending, capital ratios have declined slightly; however, leverage capital protection remains strong at 10.16%.





The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Market risk is generally increasing through robust long-term asset growth while profit margins remain relatively low. These margins are low due to declining yields on earning assets in the current, prolonged period of low market interest rates. Extension of assets is exposing some charters to rising funding costs when interest rates rise. In addition, the Department closely monitors construction lending concentrations, which vary widely throughout the industry. This type of concentration has been identified as a key risk indicator by the FDIC. The growing demand for construction lending in the expanding Texas economy can be observed in the top quartile of Texas thrifts, which have a median concentration of 120% of total capital.

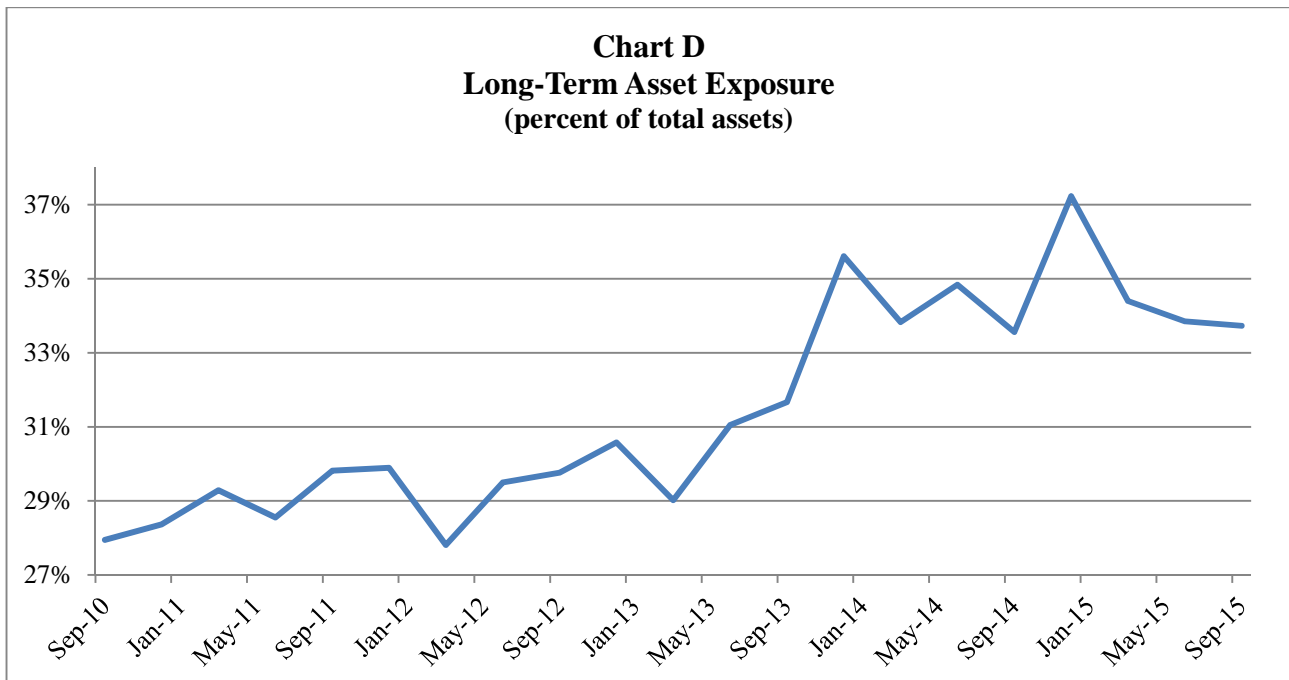
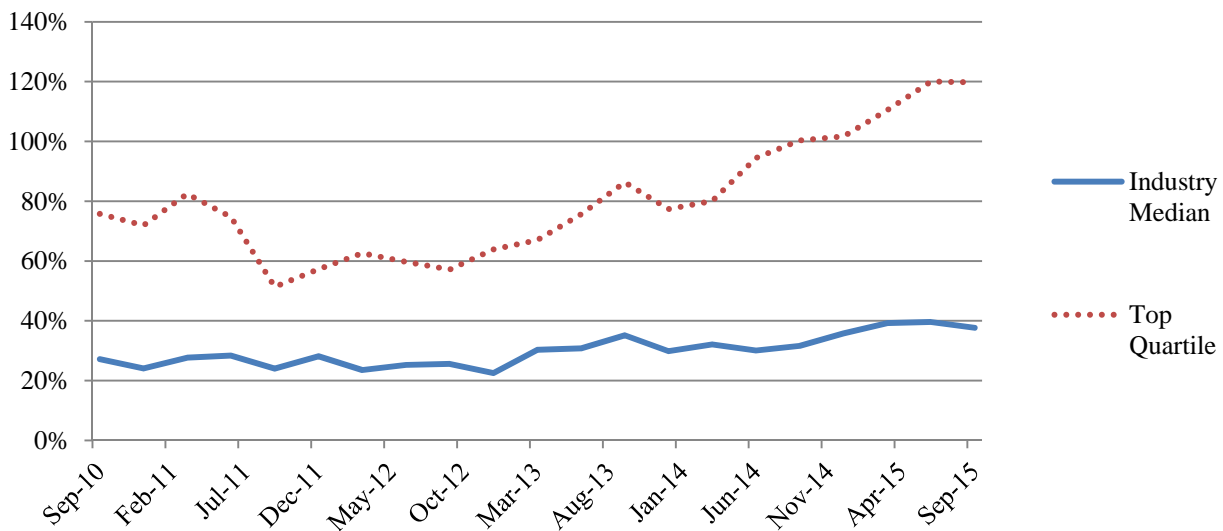
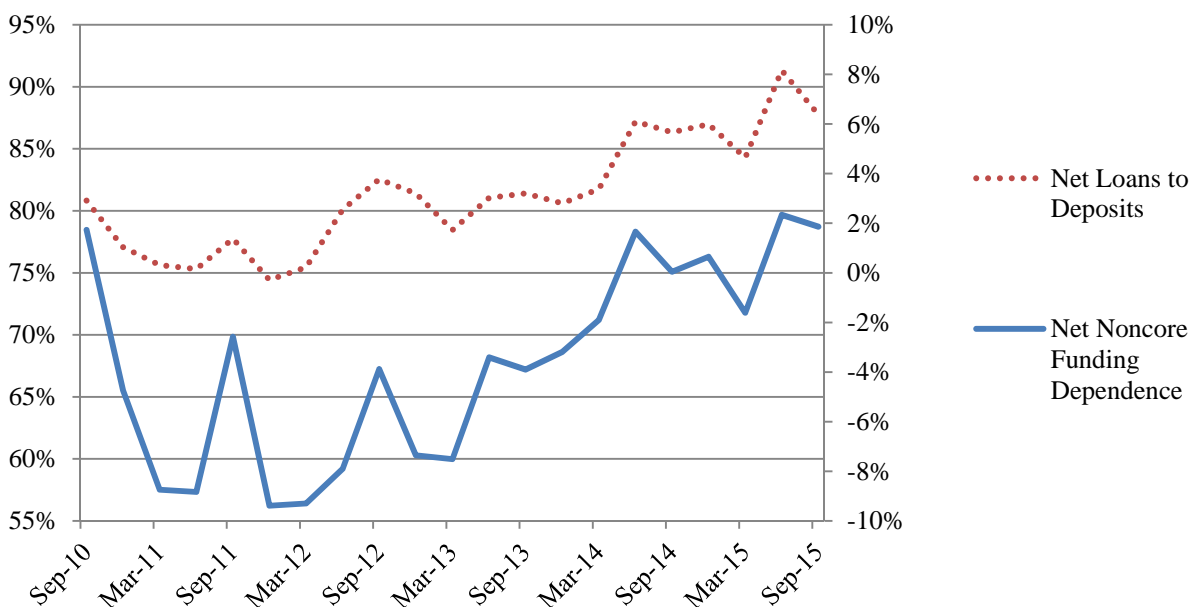


Chart E
Construction Concentrations
 (percent of total capital)



Liquidity risk is low, but increasing in Texas thrifts, as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using potentially volatile liabilities such as uninsured and brokered deposits, and borrowings. The median NNCFD Ratio has increased from 0.04% to 1.86% in the last four quarters, but is still considered manageable. Another modestly increasing indicator of liquidity risk is the loan-to-deposit ratio, which has grown from 86.33% to 87.76% over the same period.

Chart F
Liquidity Risk



b. Savings Bank Charter and Merger Activity

On September 21, 2015, an application was received regarding the merger of College Savings Bank, a New Jersey savings bank, with and into NexBank, SSB, Dallas, Texas. The merger became effective on November 30, 2015.

On September 29, 2015, an application was received regarding the merger of First Community Bank, N.A., Sugar Land, Texas, with and into Pioneer Bank, SSB, Dripping Springs, Texas. A related application was received on October 17, 2015, for JIL Associates G.P. FCH, LLC and related applicants, the controlling group of First Community Bank, N.A., to acquire majority control of Pioneer Bancshares, Inc., parent holding company of Pioneer Bank, SSB. The applications remain under review.

c. Other Items

Commissioner Jones spoke to the Alpha Kappa Psi professional business fraternity at the University of Texas McCombs School of Business.

Commissioner Jones attended an EGRPRA meeting in Washington, D.C. followed by attendance at the December FFIEC meeting as a member of the State Liaison Committee, and a State Liaison Committee meeting with Jamal L. El-Hindi, Deputy Director of FinCEN.

Commissioner Jones and Director Steven O'Shields attended the Cyber Savvy workshop for regulators hosted by the FDIC in the Dallas regional office.

2. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 11/30/2015	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	8	n/a	
<i>CUSO</i>	3	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	78	n/a	
<i>Mortgage Company</i>	1,067	437	
<i>Mortgage Banker</i>	382	2,019	
<i>Mortgage Servicer</i>	152	n/a	
Totals	1,691	2,458	21,414

As of November 30, 2015, 2,557 companies/branches and 12,760 individuals had submitted their renewal.

For the first quarter of FY16, the Department received 2,113 applications and 19,692 other filings.

b. Mortgage Examinations

The Department held its third annual Mortgage Industry Seminar in Dallas on November 17, 2015. The presentations covered licensing, mortgage call report data, social media examination procedures, consumer complaints and enforcement actions. Presentations were given by senior management and three field examiners from the Dallas and Austin regions. The feedback received from attendees was very positive.



3rd Annual

MORTGAGE INDUSTRY SEMINAR

Tuesday, November 17, 2015

3:00 – 3:05

Welcome Comments

Commissioner Caroline C. Jones

3:05 – 3:15

NMLS Mortgage Data

Senior Examiner – Justin Accola

3:15 – 3:30

TDSML Mortgage Examination Data

Senior Examiner – Ellena Meier

3:30 – 3:45

Examination Cycles & Rating Results

Senior Examiner – Bill Poe

3:45 – 4:00

Break

4:00 – 4:10

Consumer Complaints

Director of Mortgage Examination - Tony Florence

4:10 – 4:20

Enforcement Actions

General Counsel - Ernest Garcia

4:20 – 4:35

Licensing Timeframes / MCR Deficiencies

Director of Licensing - Steven O'Shields

4:35 – 5:00

Q & A Open Forum – What Do You Want to Know?

5:00

Closing Comments

Commissioner Caroline C. Jones

c. Consumer Complaints/Legal Issues

During the first quarter of FY16, a total of 232 consumer complaints were received and a total of 246 consumer complaints were resolved. Aging on open complaint files continues to be maintained at an acceptable level with no open complaints aged more than 180 days as of November 30, 2015.

Enforcement Activity: During the period of September 01, 2015 through November 30, 2015, the Department reports the following Enforcement Activity:

Disciplinary Cases

Notices of Hearings Issued: 0

Hearings Held: 0

Final Orders as a Result of a Hearing: 13

Orders to Cease and Desist: 7

Orders to Take Affirmative Action: 23

Agreed Orders to Cease and Desist: 3

Agreed Orders to Take Affirmative Action: 13

Orders of Suspension: 0

Agreed Orders of Suspension: 0

Orders Lifting Suspension: 0

Final Orders Revoking License: 0

Formal Advisory Letters: 42

Other Orders

Amended Orders to Cease and Desist: 0

Amended Orders to Take Affirmative Action: 0

Orders Rescinding Prior Order: 10

Orders of Dismissal: 2

Appeals of License Denials

Notices of Hearings Issued: 2

Appeals Received: 2

Hearings Held: 0

Final Orders as a Result of a Hearing: 3

Dismissal Orders: 2

Agreed Orders: 0

Non-Sufficient Funds (NSF)

Letters Issued: 0

Recovery Fund

Notices of Hearings Issued: 0

Hearings Held: 0

Final Orders as a Result of a Hearing: 0

Collection Cases Referred to the Attorney General

Collection Cases Referred to the Attorney General: 0

d. Other Items

Commissioner Jones and Director O'Shields, while in Dallas attending the Texas Mortgage Bankers Educational Seminar, met with Jim Carley, CFPB Southeast Regional Director, to discuss regulatory matters.

Mortgage Industry Advisory Committee – October 28, 2015 Meeting

On October 28, 2015, MIAC held a regularly scheduled meeting. At this meeting the Department provided updates on the Department's activities and answered questions from the committee members. The agenda for the meeting was as follows:

AGENDA

1. Welcome – Commissioner
2. Review of Department's General Status of Originator Licensing and Registration Activity:
 - Licensing – Director of Licensing
 - Examinations and Complaints – Director of Mortgage Examinations
 - Enforcement – General Counsel
3. 84th Legislative Session – General Counsel
4. Proposed Rules – Director of Mortgage Examinations
5. Next Meeting Dates for FY 2016
6. General Discussion
7. Adjourn – Commissioner

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is in the process of closing out the first quarter of FY16.

Financial Reporting – Staff has prepared and submitted to oversight agencies multiple reports as follows:

- Semi-annual Security Verification to Comptroller of Public Accounts (CPA);
- Self-directed, semi-independent (SDSI) annual report to Legislature

Audits – The internal auditors Garza/Gonzales have completed the risk assessment and audit plan for the fiscal year. The report is located elsewhere in the package.

b. Staffing

As of December 1, 2015, the agency was staffed at 54 regular full time employees with 64 FTEs available.

Two positions were filled during the months of October and November - Investigator II in the Investigations section and a Financial Examiner II in the Thrift Examination section. Several vacancies are in different stages of the hiring process.

c. Other Items

None

D.

**Office of Consumer
Credit Commissioner**

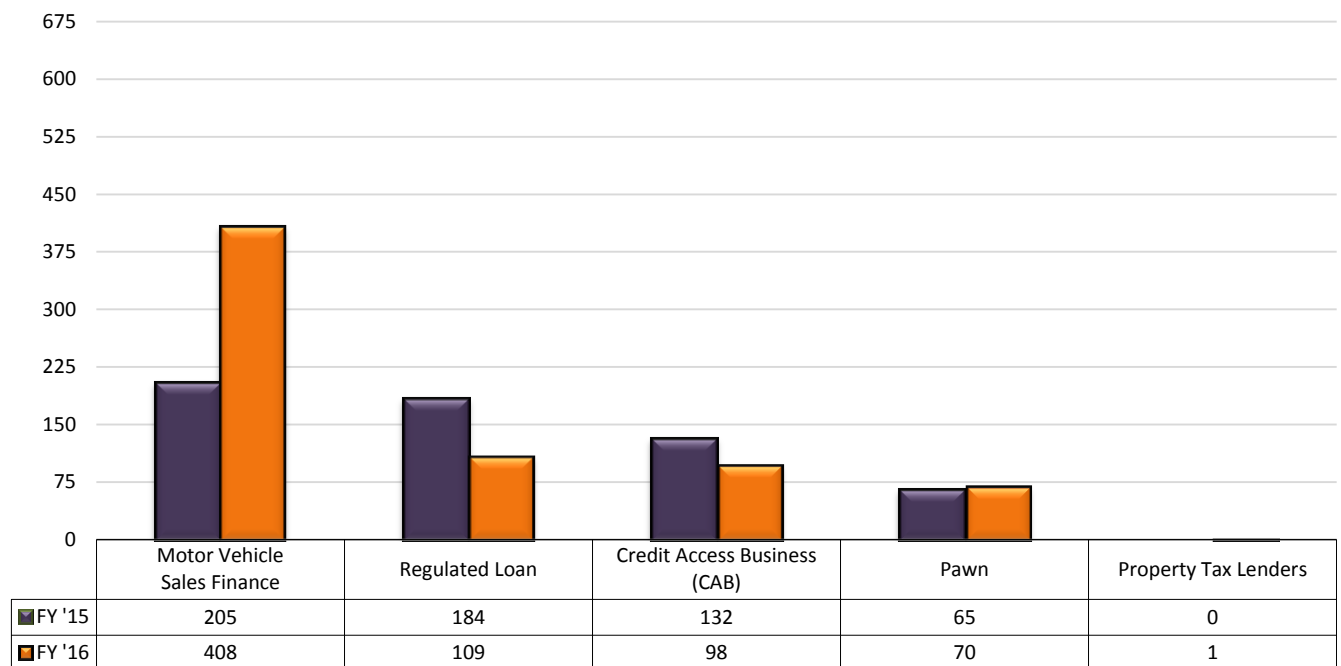


Consumer Protection and Assistance Report

Rudy Aguilar, Director of Consumer Protection

Examinations conducted in Fiscal Year 2016 (FY '16) are ahead, compared to the same time period for Fiscal Year 2015 (FY '15). Thus far in FY '16, 686 examinations have been conducted as compared to 586 examinations in FY '15.

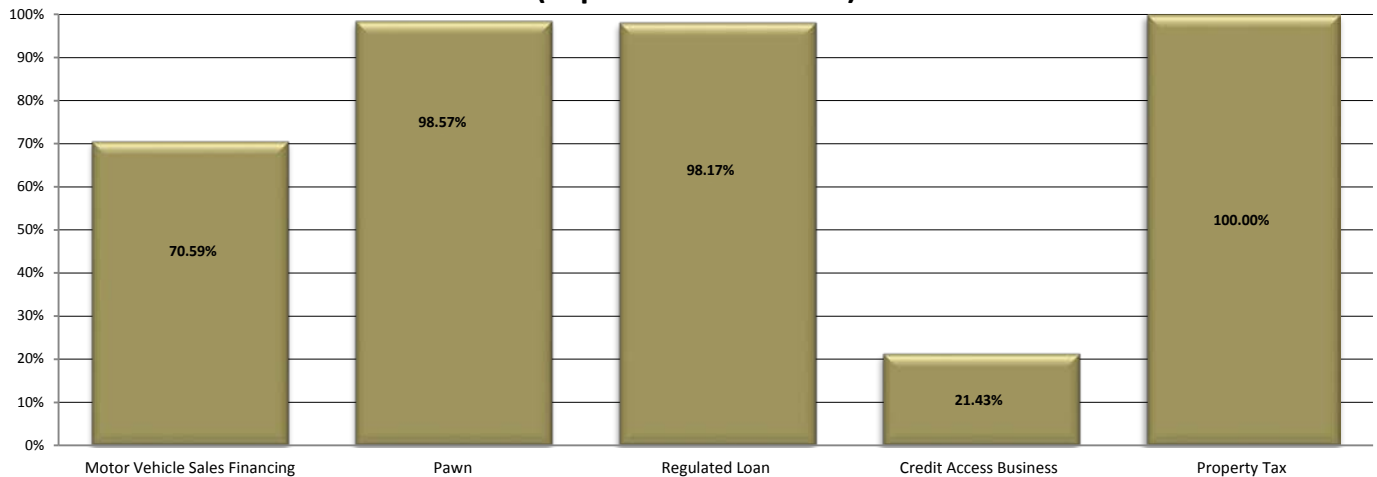
Examinations Conducted: Sept - Oct Fiscal Year Comparison



Sergio Luna was selected to fill the Consumer Assistance Investigator I position, effective November 23, 2015. Mr. Luna has begun his on-the-job training. The Houston and Dallas examiner vacancies remain posted. An additional vacancy in the Dallas region occurred in September with the resignation of Archeila Walker and that position is now posted. Mr. Gene Dow (Houston Region Supervisor) has announced his retirement, effective January 31, 2016. A recruitment and transition plan is being implemented.

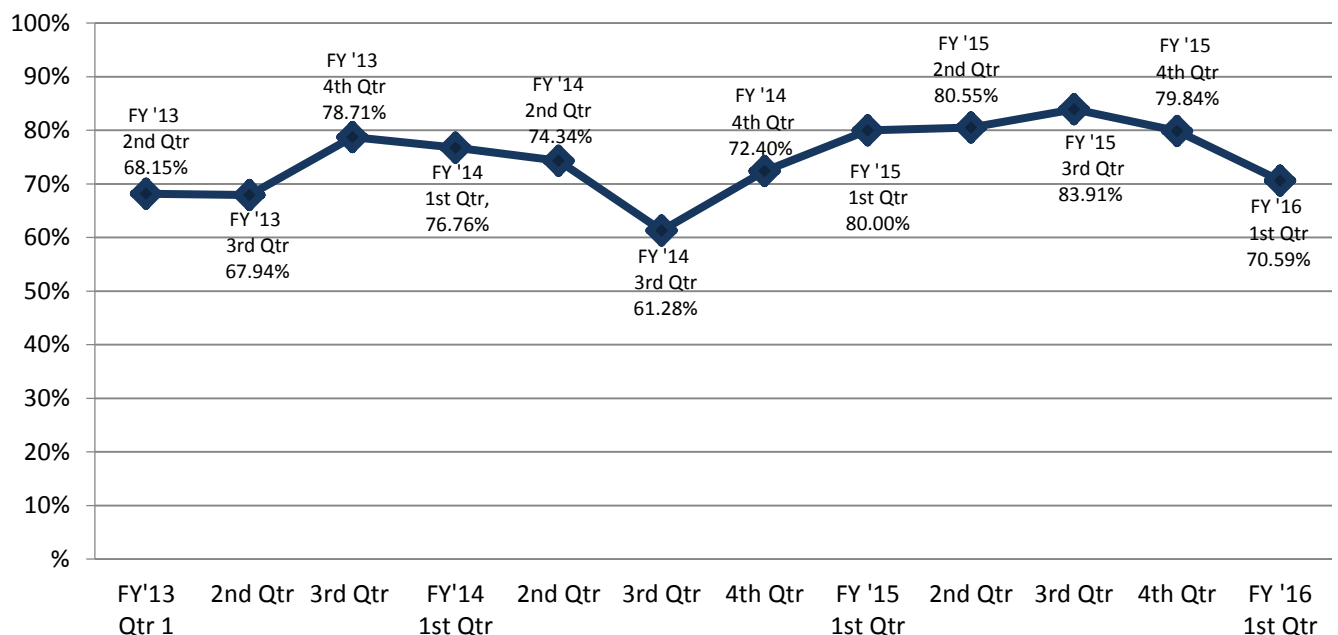
Acceptable level of compliance in the five examination areas is noted on the chart below. Motor Vehicle Sales Finance (MVSF), Pawn, Regulated Loan, and Property Tax examinations conducted are within the acceptable level of compliance. The acceptable level of compliance for Credit Access Business (CAB) examinations is 21.43% currently. When practical and possible, the agency conducts centralized examinations with a team of examiners covering multiple licensed locations, which leverages several efficiencies. Some of these group examinations have resulted in 4 rated exams, explaining the low acceptable level of compliance in the CAB examinations. As more exams are completed, the percentage of acceptable compliance will more accurately reflect overall industry compliance.

Acceptable Level of Compliance FY '16 (Sept 2015 - Oct 2015)



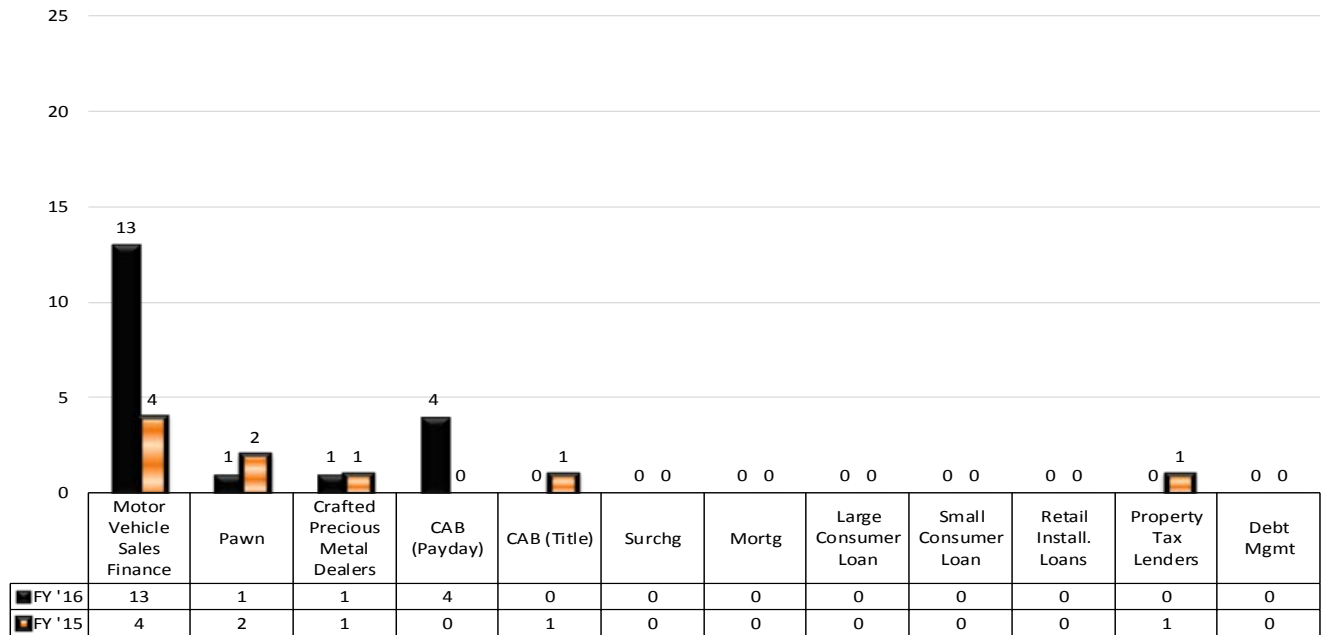
A rolling three year comparison of MVSF compliance rates by quarter is noted on the chart that follows. The centralized examination process has also affected the acceptable level of compliance in MVSF examinations, similar to the experience in CAB examinations.

MVSF: Acceptable Level of Compliance



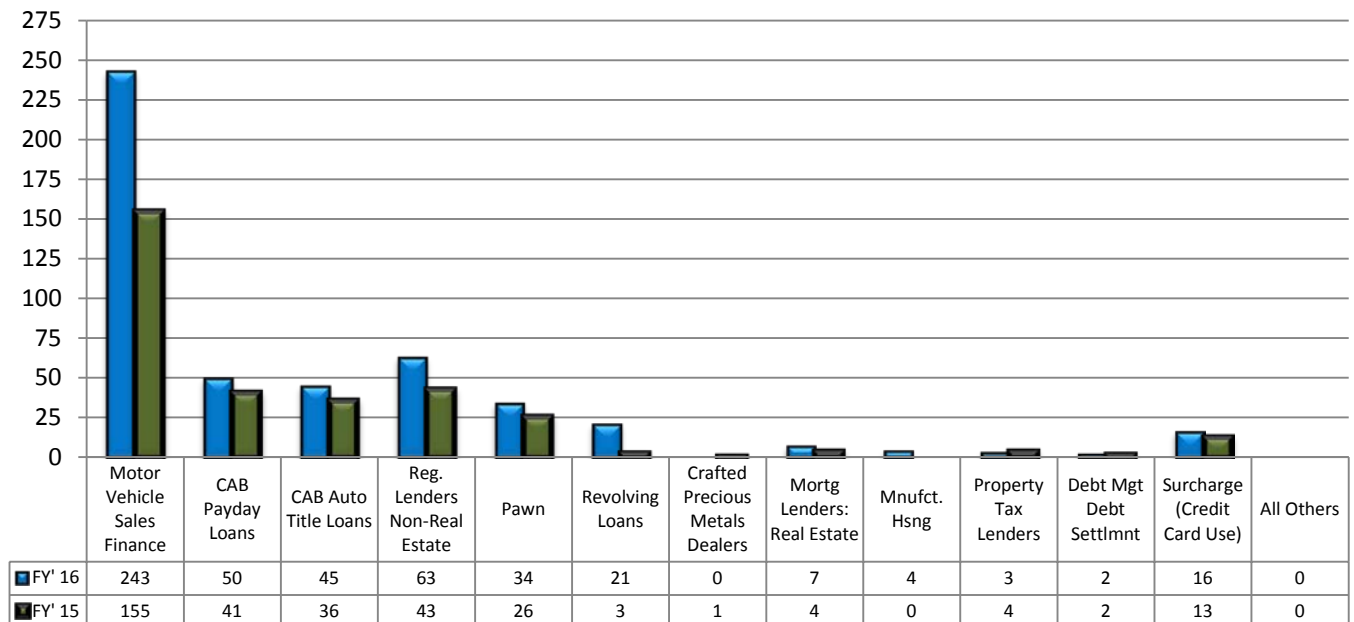
Investigations

Investigations Completed FY '16 (Sept 2015 - Oct 2015) Total: 19 FY '15 (Sept 2014 - Oct 2014) Total: 9



Consumer Assistance

Complaints Processed FY '16 (Sept 2015-October 2015) Total: 488 FY '15 (Sept 2014-October 2014) Total: 328



At the beginning of FY '16, the categories of MVSF, CAB, Regulated Lenders Non-Real Estate, and Pawn comprised 89.14% of the total complaints.

The largest complaint category thus far this fiscal year has been MVSF at 49.80% of complaints. The complaint issues by type are categorized as: repossessions (15%), payment postings/dispute of account balances (14%); issues related to ancillary products and insurance (12%), consumer right of rescission (12%), unlicensed activity (10%), financing conditioned on subsequent assignments (9%), dispute of contracted price or terms (7%), title issues (6%), mechanical issues (4%) and charges and fees (2%).

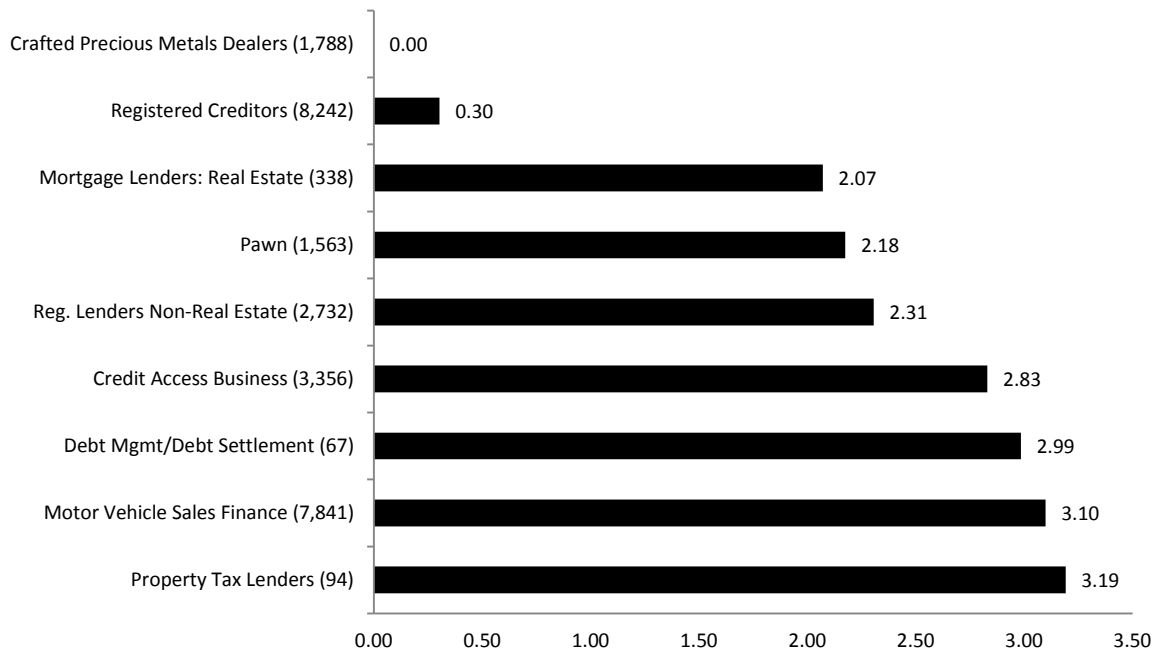
CAB Payday and Auto Title Loan complaints were the second largest category of complaints, collectively being 19.47%; separately, these are 10.25% for payday loans and 9.22% for title loans. CAB payday complaints primarily involved: allegations of improper posting of payments-ACH and dispute of account balances (34%), allegations of identity theft/fraudulent loan applications (14%), collection practices (14%), issues with staff customer service (10%), consumers alleging financial hardship and seeking assistance (8%), allegations of fraud or scams (8%), and complaints about fee amounts being charged (6%). CAB title loan complaints by type were primarily: allegations of improper posting of payments and balance owed not decreasing (29%), repossessions (22%), consumers alleging financial hardship and seeking assistance (13%), release of titles upon payoff (9%), and charges and fees (9%).

Regulated Lenders Non-Real Estate was the third largest complaint category at 12.91% for FY '16. Primary issues were mainly: allegations of abusive collection practices (32%), allegations of incorrect payoff amount (22%), and issues with staff customer service (13%).

The fourth largest category at 8.07% was Pawn complaints. The predominant issues were: replacement of lost/damaged goods (29%); redeeming of pawned items (24%); forfeiture of goods (12%); pawn service charges (9%); victim assistance in stolen items (6%), and monitoring the acceptance of goods (6%).

Comparison of complaints processed to the number of active license or registrant population is noted on the chart on the following page. The highest ratio involved Property Tax Lender complaints, followed closely by MVSF complaints. Debt Management/Debt Settlement complaints and CAB complaints had the third and fourth highest ratios respectively.

Ratio of Complaints Processed to Total Active Licenses or Registrants*
FY '16 (Sept 2015 - Oct 2015)



■ Complaints per Hundred Licenses

*License-Registrant levels as of 09-01-15

CAB Reporting Update

Reports for the third quarter CY2015 reporting period were due by October 31, 2015. The percentage of locations that timely filed the reports for this period is 97.69%. The OCCC is currently reviewing the submitted reports for accuracy before statewide reports can be compiled and published for this quarter.



Licensing Report

Mirand Zepeda, Manager

Renewals

The renewal period for Registered Creditors saw increased submissions through ALECS, with the department estimating approximately 50% were submitted online. Looking ahead to renewals in FY 2016, enhanced incentives for registrants and upgraded customer service will assist the process of requiring all registration renewals to be submitted via ALECS. The low price of registration renewal, while cost-effective for registrants, substantiates requiring online submission in FY 2016, which minimizes cost to the agency and reduces quantity of time spent by licensing staff to process paper renewals.

The renewal period for credit access businesses, property tax lenders and regulated lenders opened on December 1 and higher percentages of online submissions are projected for these business licensees.

Residential mortgage loan originators have renewals beginning at the end of December and the department has been coordinating with NMLS to ensure a timely and smooth renewal process.

Applications Processing

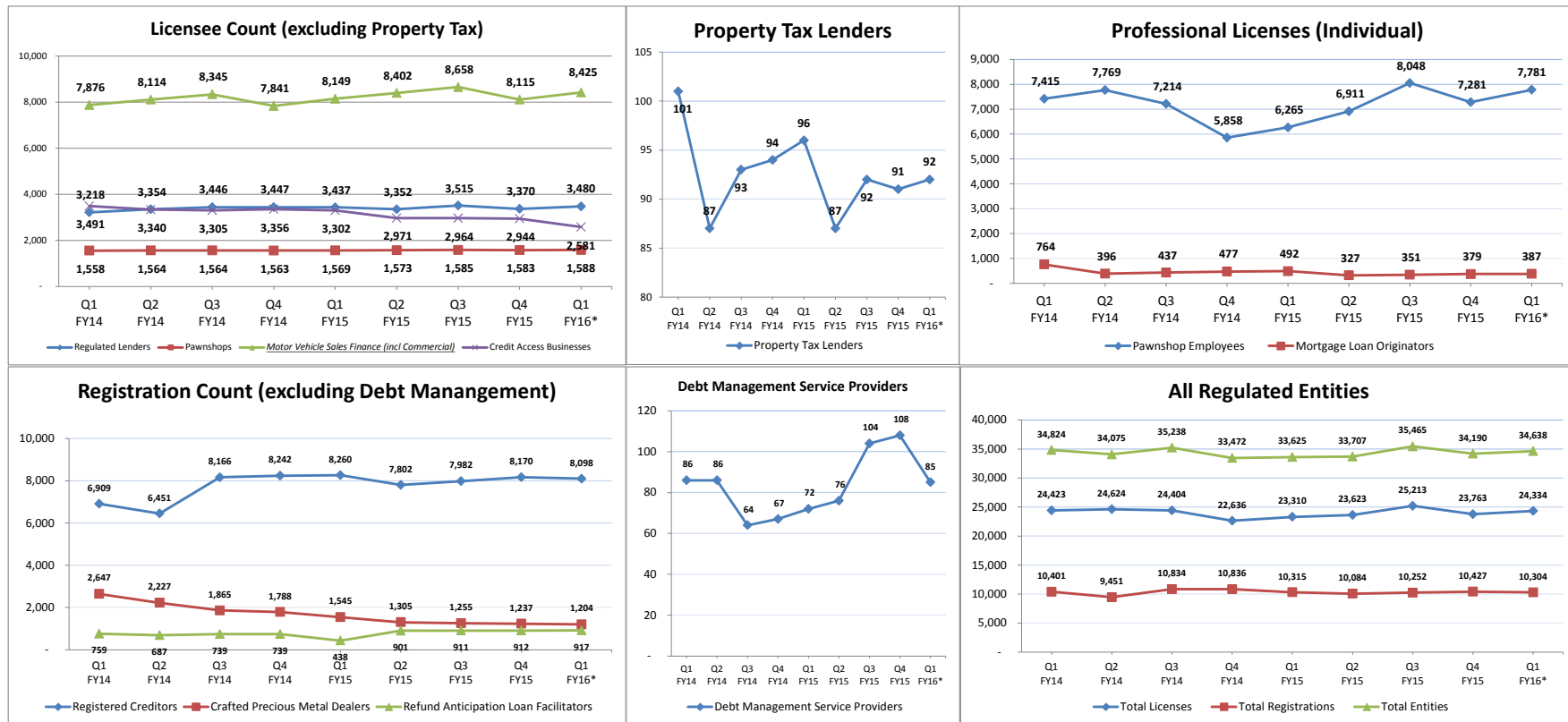
September and October of 2015 saw the fewest number of pending applications the department has seen the past 4 quarters, with an average of 364 business license applications pending in both months. Additionally, business applications submitted online via ALECS have continued to rise from approximately 75% in the beginning of September to 86% at the end of October, averaging 80% for both months. Pawnshop and transfer applications are the only paper submissions still accepted for business licenses.

The department has been able to diminish the number of pending applications while also renewing and assisting over 35,000 licensees & registrants throughout the state. While increased licensee contact, coupled with the department continuing to receive approximately 150 applications a month present a challenge, the team works to streamline and create efficiencies in a variety of processes and procedures.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2014 and 2015, and the most recent data, as of October 31, 2015.

Number of OCCC Regulated Entities Quarterly Comparison of FY 14 & 15 with Current Data





Communications, Human Resources & Administration Report

Juan V. Garcia, Director of Strategic Communications, Administration and Planning

Stakeholder Engagement and Communication

Engaging stakeholders and maintaining strong communication strategies plays an important role in the regulatory activities of the Office of Consumer Credit Commissioner. A strategic and structured approach to stakeholder relations incorporates live presentations, production of new brochures, and advisory bulletins.

The Agency held a stakeholder meeting on November 18, 2015, to discuss CAB rule changes. This meeting notice related to Part 2 of the CAB rule review, covering three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers. This meeting was a follow-up to last November's stakeholders meeting regarding the consumer disclosures.

Other stakeholder outreach included live presentations to industries overseen by the agency. Eric Fancher, Dallas Financial Examiner, made a presentation at the Texas Department of Motor Vehicles (TxDMV) dealer-training seminar on October 15, 2015, in Dallas.

Staff is currently revising communications pieces for the pawn industry for future distribution.

Human Resources

The OCCC hosted its annual conference for headquarters staff on October 22, 2015 at the Texas State Capitol. Conference activities included welcoming new staff, acknowledging successes and milestones achieved throughout the year, and discussion of goals for the upcoming year. In addition, a representative from the Training and Development Division for the Texas Workforce Commission presented a very motivating topic: *Leading to Help People Hear*, which explored "red flags" and how people can enhance their communication as employees and help everyone hear what they are really saying, easier and with a little more understanding.

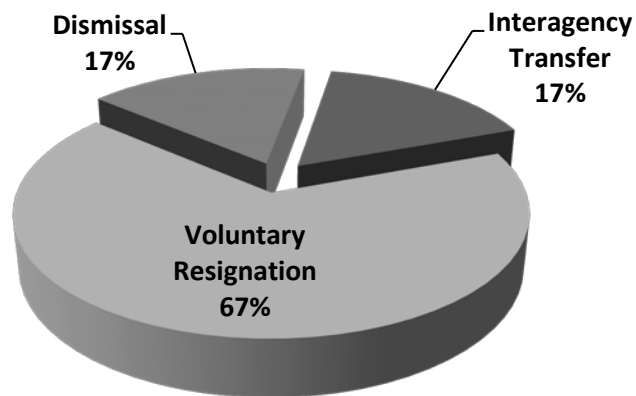
In addition, the Consumer Protection Department hosted its Annual Examiner Conference and Training Seminar the week of September 28 through October 2 in San Marcos. A wide variety of topics were covered for the examiners, including rate calculations, examination review policies and CAB panel discussions, among other topics.

During this reporting period (October and November), the OCCC also conducted its Survey of Employee Engagement with support of the University Of Texas Institute for Organizational Excellence. The agency attained an overall participation of 98.8%, the highest ever. This report will be used to assess and improve the agency's organizational effectiveness, communications and workforce.

The Agency had several employees depart the agency. Specifically, two (2) Financial Examiner II positions, one (1) Accounting Technician, one (1) Accountant III and one (1) License and Permit Specialist II. The four individuals who resigned found work in the private sector (1), Austin Independent School District (1) and Federal Government Agencies (2). In the same period, the agency hired one (1) Legal Assistant III and one (1) Investigator I. These staffing changes have resulted in an FTE count of 81.5 as of November 30.

OCCC Turnover Categories FY 16 - All Employees

Sep 1, 2015 - November 30, 2014
(1 Interagency Transfer; 1 Dismissal; 4 Resignations)

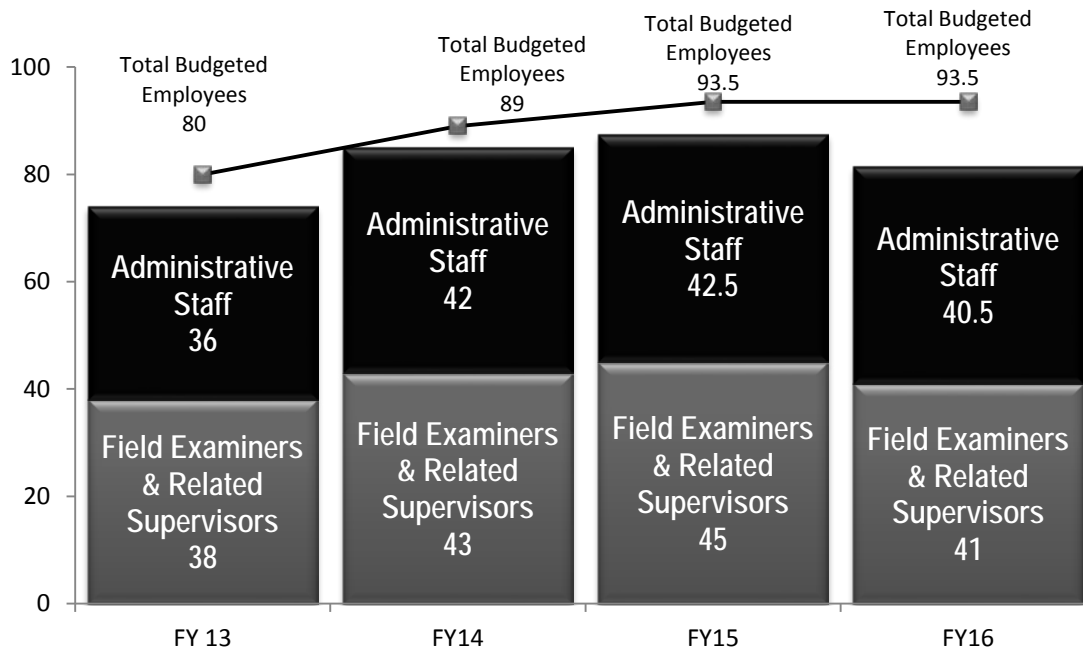


Current recruitment and selection efforts are focused on filling the vacancies listed below.

Current FY 2016 Vacancies	
Vacancy	Status
Financial Examiner III - Houston	Active
Accountant III	Active – Interviews in progress
Accounting Technician II	Active – Interviews in progress
License and Permit Specialist II	Active – Applications under review
Financial Examiner I – DFW (2 openings)	Active – Applications under review

The following graph represents a breakout of administrative staff compared to field examiners for FY 2013-2016. In addition, the bar graph also shows the total allowable FTEs for the agency during the same previously mentioned fiscal year comparison.

OCCC Employee Data FY 13 - FY 16



Financial Literacy

On October 11, 2015, Dana Edgerton, Education Specialist, participated on a panel for the League of Women Voters Austin Area to discuss the history of Credit Access Businesses and its legislation. The panel was comprised of various community organizations, one being St. Vincent de Paul which is a Texas Financial Education Endowment (TFEE) grantee, Texas Appleseed, Catholic Charities, and a local attorney. Each panelist discussed their experiences. St. Vincent de Paul also discussed how TFEE funds have allowed them to help consumers reduce their debts.

In addition, staff discussed the regulatory role OCCC serves within the industry and TFEE's role in the community regarding financial education.

On October 21, 2015, Dana Edgerton also attended a training held by the Consumer Financial Protection Bureau (CFPB) titled *Your Money, Your Goals: A Financial Empowerment Toolkit for Social Services Programs*. The program is designed to have a financial coaching "feel" and personal approach to financial literacy. The curriculum consists of various modules and tools that are based on the client's needs as opposed to a systematic process. Modules range from goal setting, to evaluating financial service providers, products, and services, to protecting their consumer rights. In addition, CFPB created tools that accompany each module so clients have opportunities to practice what they are learning. Staff will evaluate these materials in more depth for possible inclusion in its financial literacy presentations.

On October 22, Juan V. Garcia, Director of Strategic Communications, Administration and Planning presented a similar presentation to the League of Women Voters Comal Area. His presentation entailed the history of credit access businesses, including legislation and a brief overview of the current city ordinances.

Staff will continue to identify networking relationships to create collaborative partnerships with community organizations, further develop educational consumer resources for the OCCC website and meet the fiscal year's goals.



Accounting & IT Reports

Accounting

The accounting department distributed a revised internal travel policy. Also, the accounting department worked to make changes to the format of the current time keeping system. Work in November will include reporting of Annual Non-Financials, due at the end of the month.

Information Technology-Legacy Modernization

This past summer, the agency released a Statement of Work (SOW) to select a vendor to implement the Annual Reporting, Complaint and Examination (ACE) IT project. Since the last Finance Commission report, the Agency went through a thorough vetting and selection process to select a vendor. Commissioner Pettijohn appointed a committee within the Agency to review the proposals and make a recommendation.

Two finalists were asked to come back and make a presentation to the group. A selection committee meeting was held on October 28, 2015 after evaluations were completed and scores tallied. All members agreed on the vendor selection and a recommendation was made to Commissioner Pettijohn for approval.

Once the recommendation was approved, the vendor was contacted and asked for a follow-up meeting on November 2, 2015 to begin negotiation on the SOW. During this meeting, clarifications were made and expectations laid out for the ACE project. The vendor is currently working on the details discussed at that meeting and is to provide a final SOW for agency approval within the next couple of weeks.



Legal Department Report

Michael Rigby, General Counsel

December 2015

Enforcement Report

Pawnshop – Annual Reports

In October 2015, the OCCC issued 32 Notices of Report on Violation and Administrative Penalty Recommendation against pawnshops who failed to timely file their 2014 annual report. Pawnshops are required to file an annual report by June 1 of each year. Of the 32 late filers, 26 licensees subsequently filed their report and paid the recommended administrative penalty, 4 licensees did not pay the penalty or file the report, and 2 licensees demonstrated that their report was either submitted timely or delayed due to technical issues beyond their control. On November 6, 2015, the OCCC issued 30 Final Orders upholding the recommended administrative penalty and requiring 4 licensees to submit their report or pay the penalty within 30 days of receiving the Final Order. Licensees who do not timely submit their annual report or pay the assessed administrative penalty will be subject to additional enforcement actions including license revocation.

SOAH Hearings

On September 16, 2015, the OCCC participated in two contested case hearings before the State Office of Administrative Hearings ("SOAH") involving pawnshop employee license application denials. The ALJ issued proposals for decision recommending the denial of both applications. On November 10 and 17, 2015, Juan V. Garcia, as the Commissioner's designee, adopted both recommendations and issued final orders denying the applications. The applicants have 30 days from the date of being notified of the final order to file a petition for judicial review in Travis County district court.

Administrative Rule Report

At the December meeting, the OCCC is presenting four rule actions:

- An adoption of new rules and amendments to examination guidelines, recordkeeping requirements, and other requirements for credit access businesses.
- An adoption of amendments to contested case procedure references.
- Proposed amendments to consumer disclosures, reporting requirements, and license transfers for credit access businesses.
- Proposed amendments providing technical corrections to rules for crafted precious metal dealers.

At upcoming meetings, the OCCC plans to present rule actions regarding the following issues:

- Amendments relating to rule review for motor vehicle installment sales, including the procedure for filing a documentary fee.
- Amendments relating to rule review for tax refund anticipation loans, administration, and interpretations and advisory letters.

Performance Report

The following table is an overview of enforcement actions completed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of November 30, 2015. These figures only reflect actions that have been fully resolved with a final order. Actions that are still pending are not included in the table. The table does not include license application denial actions. The OCCC completed two application denial actions in Fiscal Year 2014 and 25 denial actions in Fiscal Year 2015. As of November 30, 2015, the OCCC has completed four application denial actions in Fiscal Year 2016. It is difficult to predict the types of cases the legal department will pursue, as many factors impact how each enforcement matter will evolve. The following table provides a snapshot of completed enforcement actions during the listed time period.

Enforcement Actions Completed as of November 30, 2015				
	FYTD 2016	FY 2015	FY 2014	FY 2013
Revocation / Suspension Actions				
Regulated Loan License	0	27	10	3
Pawnshop License	1	2	1	1
Pawnshop Employee License	1	2	1	2
Credit Access Business	0	1	4	0
Motor Vehicle Sales Finance License	5	4	4	3
Property Tax Loan License	0	0	4	0
Crafted Precious Metal Dealer	0	2	0	0
Total Revocation / Suspension Actions	7	38	24	9
Cease & Desist Actions				
Regulated Loan License	0	1	0	1
Pawnshop License	1	0	0	0
Pawnshop Employee License	0	0	0	0
Credit Access Business License	0	1	4	1
Motor Vehicle Sales Finance License	2	12	8	13
Property Tax Loan License	0	1	2	1
Crafted Precious Metal Dealer	0	3	0	0
Registered Creditor (Ch. 345)	0	0	0	1
Debt Management Services (Ch.394)	0	6	1	1
Credit Card Surcharge (Ch. 339)	0	1	0	0
Unlicensed Activity – Other Chapters	0	0	2	10
Total Cease & Desist Actions	3	25	17	28
Administrative Penalty Actions				
Regulated Loan License	0	73	121	144
Pawnshop License	30	4	6	9
Pawnshop Employee License	1	4	8	8
Credit Access Business License	28	136	56	52
Motor Vehicle Sales Finance License	21	76	88	112
Property Tax Loan License	1	8	18	12
Crafted Precious Metal Dealer	0	0	1	0
Residential Mortgage Loan Originator	0	0	0	0
Total Administrative Penalty Actions	81	301	298	337
Total Enforcement Actions Closed	91	364	339	374

From October 1, 2015 to November 30, 2015 the OCCC:

- issued 37 final orders,
- opened 55 cases in order to assess administrative penalties,
- opened 2 cases in order to issue administrative injunctions,
- held no administrative hearings, and
- dismissed 1 administrative hearing.

The OCCC has 2 hearings scheduled between December 1, 2015 and January 31, 2016.

Litigation

Ovation Lending LLC v. Finance Commission of Texas:

A Travis County district court dismissed a lawsuit brought by a group of property tax lenders against the Finance Commission and the OCCC, seeking to prevent enforcement of the commission's recently adopted rule at 7 Texas Administrative Code Section 89.601(d)(5). This rule prohibits a property tax lender from making a separate loan to finance discount points, if the loan is payable to the property tax lender or an affiliate.

On September 22, 2015, the court granted the motion for summary judgment filed by the commission and OCCC, dismissing the plaintiffs' lawsuit. The court's order dissolved a temporary restraining order that previously restrained the commission and the OCCC from enforcing Section 89.601(d)(5). The plaintiffs did not appeal the case, and their deadline for appealing passed on October 22.

The full style of the case is *Ovation Lending LLC, Alamo Home Finance Inc., USPTL LLC, and Tax Advances LLC v. Finance Commission of Texas, Office of Consumer Credit Commissioner, and Leslie Pettijohn, in her Official Capacity as Commissioner of the Office of Consumer Credit Commissioner*. The case number is D-1-GN-15-002641, in the 98th district court in Travis County, Texas.

The court also dismissed an older case with the same parties. The older case involved a challenge to the previous version of Section 89.601(d), which prohibited discount points altogether. The commission and OCCC filed a plea to the jurisdiction in this case, arguing that the case is moot because the challenged version of Section 89.601(d) no longer exists. The court granted the plea to the jurisdiction on August 7, dismissing the case. The agreed temporary restraining order from the old case has expired. The plaintiffs filed a motion for a new trial in this case, but it was overruled by operation of law on October 25. The plaintiffs did not appeal the case, and their deadline for appealing passed on November 9. The case number for the old case is D-1-GN-15-000886, in the 353rd district court in Travis County, Texas.

Rowell v. Pettijohn:

This case is currently before the Fifth Circuit Court of Appeals, and it involves the constitutionality of the credit card surcharge prohibition in Section 339.001 of the Texas Finance Code. Last year, a group of merchants filed a complaint in federal district court against Leslie Pettijohn in her official capacity, to enjoin enforcement Section 339.001. The merchants argue that the prohibition is an unconstitutional violation of free speech and that it is void for vagueness, in violation of the First and Fourteenth Amendments to the U.S. Constitution. In February 2015, the court granted the OCCC's motion to dismiss the lawsuit, holding that Section 339.001 is a regulation of pricing and economic conduct rather than speech, and that it is not void for vagueness. *Rowell v. Pettijohn*, No. 1:14-cv-00190-LY, 2015 U.S. Dist. LEXIS 40739 (Feb. 4, 2015).

The plaintiffs appealed the case to the Fifth Circuit. Both sides have filed their briefs on the merits, and oral argument was held on December 1. The Fifth Circuit has requested supplemental briefing from both sides regarding two issues: (1) whether Section 339.001 can be interpreted to

prohibit dual pricing, and (2) whether this interpretation would present a preemption issue in light of federal law.

The full style of the case is *Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas*. The Fifth Circuit's case number is 15-50168, and the district court's case number is 1:14-cv-00190-LY. The OCCC is being represented by two divisions of the Office of the Attorney General: the Office of Solicitor General and the Financial Litigation, Tax, and Charitable Trusts Division.

Similar cases have been filed in three other states:

- The Second Circuit upheld New York's credit card surcharge law. *Expressions Hair Design v. Schneiderman*, 803 F.3d 94 (2d Cir. 2015), reversing 975 F. Supp. 2d 430 (S.D.N.Y. 2013). The plaintiffs have filed a motion for rehearing en banc (i.e., a motion for all the judges on the Second Circuit to rehear the case).
- The Eleventh Circuit struck down Florida's credit card surcharge law. *Dana's R.R. Supply v. Att'y Gen.*, 2015 WL 6725138, 2015 U.S. App. LEXIS 19201 (11th Cir. Nov. 4, 2015), reversing no. 4:14-cv-00134-RH-CAS (N.D. Fla. Sept. 2, 2014). The State of Florida has filed a motion for rehearing en banc.
- A federal district court struck down California's credit card surcharge law. *Italian Colors Rest. v. Harris*, No. 2:14-cv-00604-MCE-DAD, 2015 WL 1405507, 2015 U.S. Dist. LEXIS 39030 (E.D. Cal. Mar. 26, 2015). The State of California has appealed this case to the Ninth Circuit.

ACE Cash Express, Inc. v. City of Denton:

Several credit access businesses (CABs) have sued cities, arguing that CAB ordinances are preempted under state law. In June, the Fort Worth court of appeals rejected a challenge to Denton's CAB ordinance, finding that the CAB had not demonstrated a sufficient harm to its property interests to provide a state court with jurisdiction to hear the case. *ACE Cash Express, Inc. v. City of Denton*, No. 02-14-00146-CV, 2015 WL 3523963, 2015 Tex. App. LEXIS 5723 (Tex. App.—Fort Worth June 4, 2015, pet. filed) (mem. op.). The decision of the court of appeals was based partly on a Dallas court of appeals decision from last year, which rejected a challenge to Dallas's CAB ordinance for similar reasons. *Consumer Serv. Alliance of Tex., Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App.—Dallas 2014, no pet.). On September 14, ACE Cash Express filed a petition for review with the Texas Supreme Court to appeal the case. The City of Denton's response is due on December 14.

Advisory Bulletins

From October 1, 2015 to November 30, 2015 the OCCC did not issue any advisory bulletins.

Interpretation Requests

From October 1, 2015 to November 30, 2015 the OCCC did not receive any requests for official interpretations. There were no pending interpretation requests as of November 30, 2015.

Open Records Requests

From October 1, 2015 to November 30, 2015 the OCCC has processed and responded to 27 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From October 1, 2015 to November 30, 2015 the OCCC did not receive any gifts.

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E.

Texas Department of Banking



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Kurt Purdom, Director of Bank & Trust Supervision

Date: December 4, 2015

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2015							
8/31/2014			8/31/2015		11/30/2015*		2/28/2016		5/31/2016		8/31/2016	
Industry Profile (# / Assets in billions)												
# Banks	273	\$225.2	256	\$240.7								
# Trust Co. (1)	21	\$40.5	20	\$97.1								
# FBA/FBB	10	\$93.6	9	\$89.2								
Examinations Performed												
Banks	125		118									
Trust Co.	32		28									
FBA/FBB	2		2									
Bank Uniform Financial Institution Composite Ratings												
1	128	46.9%	127	49.6%								
2	132	48.3%	122	47.7%								
3, 4, & 5	13	4.8%	7	2.7%								
Non-Rated	0	-	0	-								

* First quarter numbers are not yet available.

(1) Fiduciary assets for non-exempt trust companies only.

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5 to be a problem institution. In the last economic recession, problem banks peaked in June of 2010 at 58. However, as illustrated in the table above, problem bank numbers have steadily decreased, and as of December 4, 2015, problem banks totaled 7. Aided by improved economic conditions, problem bank numbers have returned to pre-recession levels, which we consider to be a range between 3% and 5% of the total number of institutions. Entities with significant oil and gas exposure are being closely monitored as a protracted period of low oil prices could result in additional asset quality problems for some institutions and lead to an increase in the number of problem banks.

Administrative/Enforcement Actions (Number outstanding as of the date indicated)			FY 2015			
	8/31/2014	8/31/2015	11/30/2015*	2/28/2016	5/31/2016	8/31/2016
Banks - Safety and Soundness						
Formal	5	2				
Informal	21	14				
Banks - Bank Secrecy Act (BSA)						
Formal	0	1				
Informal	1	0				
Banks - Information Technology (IT)						
Formal	0	0				
Informal	4	2				
Trust Departments of Banks and Trust Companies						
Formal	0	0				
Informal	1	2				
Total Administrative/Enforcement Actions						
Formal	5	3				
Informal	27	18				
Total	32	21				

* First quarter numbers are not yet available.

Formal actions include Orders to Cease and Desist, Consent Orders and Written Agreements.

Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.
Orders of Supervision, Orders of Conservatorship and Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2015	FY 2016 (YTD)
Commercial Banks (All / DOB Only)	94% / 93%	97% / 100%
IT	95% / 95%	97% / 100%
Trust	97% / 100%	83% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	97%	100%
IT	100%	100%

Division Highlights

- **Cybersecurity Threats:** The Department continues to work with the banking industry to enhance the policies, procedures and practices that institutions can use to counter the ever growing array of cyber threats. Our Director of IT Security Examinations, Phillip Hinkle, is one of six members of the Cybersecurity and Critical Infrastructure Work Group (CCIWG) created by the Federal Financial Institutions Examination Council, or FFIEC. The CCIWG is working at the national level to address cyber threats to the banking system. Texas banks will benefit from the Department participating in this group because weaknesses in the banking industry and payments system are not geographically isolated due to the interrelated nature of banking and the use of similar banking practices and controls.

As reported previously, the CCIWG released a Cybersecurity Assessment Tool (CAT) on 6-30-15. As a member of the CCIWG, we participated in the development of this tool along with federal bank regulatory agencies. The tool is designed to assist bank managers in evaluating their inherent risks to cyber threats and measuring their preparedness to handle such events. Though the use of this tool by bank managers is optional, Commissioner Cooper issued Industry Notice 2015-8 on 9-15-15 alerting the industry about this useful tool and stating that measuring and preparing for cyber risks is not optional. The notice advised bank managers to assess and measure their bank's cyber risks and preparedness no later than 12-31-15. The Department's IT Specialists will begin reviewing completed cybersecurity assessments at all information technology exams starting after 1-1-16.

The Executive Leadership of Cybersecurity (ELOC) initiative that the Department launched last year was shared with the Conference of State Bank Supervisors (CSBS) so other states could hold similar events. Over a dozen other states have held ELOC events in 2015, with federal bank regulatory agencies participating in many of those state lead events.

We continue to place a high importance on cyber threats and are a leading agency in identifying and addressing measures the industry needs to take. Thus far in 2015, Director of IT Security Examinations Hinkle has spoken to 22 banking groups about cybersecurity and to eight groups of bank regulators.

- **Oil and Gas Risk Analysis:** As previously reported, agency staff continues to assess the risks associated with bank lines of business directly dependent upon oil and gas production as well as areas of indirect exposure. In November, Review Examiner Whitson sent a follow-up risk assessment to 27 Texas banks that were known to be actively involved in oil and gas lending. Results from this risk assessment will be used to supplement two previous requests for information on this important subject. In addition, staff continues to work closely with the FDIC and Federal Reserve Bank of Dallas to perform follow-up reviews at banks with potentially higher risk profiles. Many of these reviews have been completed, and to date, no material supervisory concerns have been identified.
- **Special Operations and Conferences:**
 - Commissioner Cooper, Director Purdom and five Texas community bankers participated in the Community Banking in the 21st Century Research Conference held 9-30-15 and 10-1-15 at the Federal Reserve Bank of St. Louis, St. Louis, Missouri. This third annual conference, which was sponsored by CSBS and the Federal Reserve Bank of St. Louis, brought together academics, regulators, policymakers and bankers to discuss the latest in community bank research and other issues facing the community banking sector. The research and discussions centered around three main points:
 - Small business and farm lending;

- Community bank performance; and
- Community bank issues pre- and post-crisis.

Leading up to the conference, state banking regulators in 27 states held roundtable, town hall style meetings with their community bankers to gather first-hand accounts of the challenges and opportunities community banks face. One highlight of this year's conference was the key note address given by Reid Ryan, founding investor and Director of R Bank Texas, Round Rock and President of Business Operations of the Houston Astros Baseball Club. Other Texas bankers attending the conference included President and CEO John Jay of the Roscoe State Bank, Roscoe, President and CEO Scott Heitkamp of ValueBank Texas, Corpus Christi, Chairman of the Board Curtis Griffith of City Bank, Lubbock and President and CEO Steve Stapp of R Bank Texas. Highlights of the conference, including research papers that were presented and keynote speaker remarks can be found at: <https://www.csbs.org/news/press-releases/pr2015/Pages/PR-100615.aspx>

- Commissioner Cooper and other staff members attended the Money Transmitter Regulators Association Annual Conference held in Kansas City, Missouri the week of 10-5-15.
- Commissioner Cooper participated in a bank regulatory panel at the Bank Operations Institute held at the Cox School of Business, Southern Methodist University, Dallas on 10-13-15.
- Commissioner Cooper, Deputy Commissioner Bacon and Director Purdom participated in the San Antonio Regional Office staff meeting on 11-23-15.

- Federal Capital Programs: The table below provides a snapshot of the two federal capital programs.

Federal Programs	Troubled Asset Relief Program (TARP) as of 11/18/2015 ⁽²⁾	Small Business Lending Fund (SBLF) as of 10/31/2015
Number of Applicants	80	23
Number of Banks that Received Funds	21	12
Total Amount Distributed (\$ in millions)	\$2,837.7	\$255.7
Number of Banks with Outstanding Funds	0	9
Total Amount Outstanding (\$ in millions)	\$0	\$139.6

(2) - The U.S. Treasury sold some of the TARP debt listed above at auction to private investors. In many cases, this debt is still outstanding, even though it is no longer payable to the U.S. Treasury.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Daniel Frasier, Director of Corporate Activities *DBF*

Date: December 3, 2015

Subject: Summary of the Corporate Division Activities

Corporate Activities		Applications and Notices Processed						
Entities	FY2013	FY2014	FY2015	1Q15	2Q15	3Q15	4Q15	1Q16
*Banks and Bank-related (holding companies, etc.)	197	271	236	45	57	73	61	*
Foreign Banks	1	0	6	0	1	2	2	*
Trust Companies	11	13	8	3	2	2	1	*
MSBs	21	23	32	7	4	7	13	*
PCSEAs	3	11	3	0	1	1	1	*
CVEs	4	3	3	0	3	0	0	*
Cemetery Brokers	-	4	4	0	2	0	2	*
Other (Use of Name)	67	41	50	10	12	11	16	*
Totals	304	366	342	65	82	96	96	*
Background Checks Completed								
Entities	FY2013	FY2014	FY2015	4Q14	1Q15	2Q15	3Q15	1Q16
#Banks and Bank-related (holding companies, etc.)	71	111	24	6	4	16	1	*
Foreign Banks	0	0	0	0	0	0	0	*
Trust Companies	8	10	0	0	8	0	0	*
MSBs	130	108	137	14	43	29	33	*
Other	1	0	0	0	0	0	0	*
Totals	210	229	161	20	55	45	34	*

*First quarter fiscal year 2016 data has not been finalized and will be provided in the next summary

- Includes all types of applications and notices for each entity.

Entities/Activities	Application and Notices Under Review (as of December 2, 2015)
*Banks and bank-related (holding companies, etc.)	10
Foreign Banks	0
Trust Companies	1
MSBs	13
PCSEAs	0
CVEs	0
Cemetery Broker	0
Other (Use of Name)	1
Totals	24

Division Highlights

- The volume of applications received this first fiscal quarter of 2016 are moderate as compared to the last few years, but have slowed over the past few weeks.
- Chartering, Conversion, and Merger Activity – The following transactions consummated in the first quarter of the 2016 fiscal year:
 - *Banks*
 - R Bank, Round Rock, completed its merger acquisition of Schwertner State Bank, Schwertner.
 - Patriot Bank, Houston, merged with and into Green Bank, N.A., Houston.
 - Independent Bank, McKinney, completed its merger acquisition of Grand Bank, Dallas.
 - *Trust Companies*
 - The Trust Company, San Antonio, completed its merger with affiliated trust company, Argent Trust Company, N.A., Ruston, Louisiana.
- Conferences and Committee Meetings – Corporate participation included the following conferences and external committee meetings:
 - Director of Corporate Activities Dan Frasier participated in the Money Transmitter Regulators Conference in Kansas City, Missouri, on October 6th through the 8th.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits

Date: December 2, 2015

Subject: Summary of the Special Audits Division Activities

Special Audits					FY 2016							
Entity	FY2014		FY2015		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))												
MSB	136	\$96.0	142	\$104.0	147	\$104.1						
PFC	381	\$3.4	383	\$3.6	378	\$3.6						
PCC	242	\$286.6	243	\$298.0	245	\$305.4						
CB	4	n/a	8	n/a	9	n/a						
PCSEA	11	n/a	11	n/a	11	n/a						
CVE	3	n/a	2	n/a	2	n/a						
Examinations Performed												
MSB	93		97		*							
MSB Limited Scope	0		2		*							
MSB Accepted other State	6		7		*							
PFC	295		259		*							
PFC Limited Scope	10		6		*							
PCC	179		211		*							
PCC Limited Scope	6		1		*							
Ratings (# / %) Assigned to All Regulated Entities												
1	319	43%	340	45%	*	*						
2	355	48%	332	45%	*	*						
3,4, & 5	66	9%	78	10%	*	*						
Noncompliance with Examination Priorities (Past Due)												
MSB	15		8		*							
PFC	1		4		*							
PCC	4		3		*							
Enforcement Actions												
MSB	3		9		1							
PFC	1		10		1							
PCC	0		0		0							
PCSEA	0		0		0							

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*First quarter fiscal year 2016 data has not been finalized and will be provided in the next summary.

Division Activities:

During the week of October 5th Commissioner Cooper, Deputy Commissioner Newberg, Director Reese, and various DOB staff attended the annual MTRA conference in Kansas City, MO, where current trends and events in the MSB industry were discussed. Director Reese also participated on a panel with other state regulators and representatives from CSBS. This panel offered a forum for the MSB industry to ask questions about any concerns that they had related to the current regulatory oversight of the industry.

PFC/PCC Financial Examiners met in Round Rock the week of October 26th to discuss current events in the industry and to receive additional training on performing examinations and submitting compliant examination reports.

Two job postings recently closed to fill a PFC/PCC and MSB Financial Examiner vacancy and we anticipate interviewing applicants in the near future.

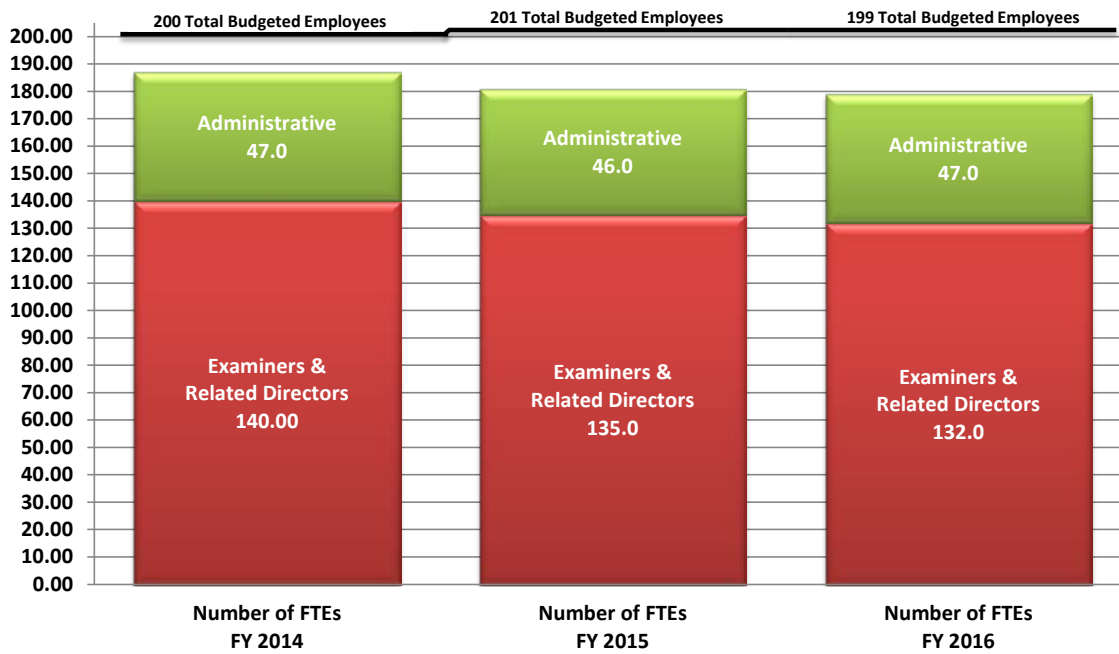
MSB staff continues with its participation in conference calls every two months with the MTRA Emerging Issues Task Force. The conference calls allow MTRA member states to discuss various MSB business models to attempt to provide clarity and regulatory certainty for businesses and individuals engaged in an expanding field of financial activity.

The Department became aware of some MSBs that are choosing to conduct business solely from a residence or they are choosing to operate their businesses entirely remotely. Therefore, on November 24th, the Department issued Supervisory Memorandum 1041 to provide guidance to our licensed MSBs on where the Department will conduct examinations when a domestic-located MSB does not have a conventional office.

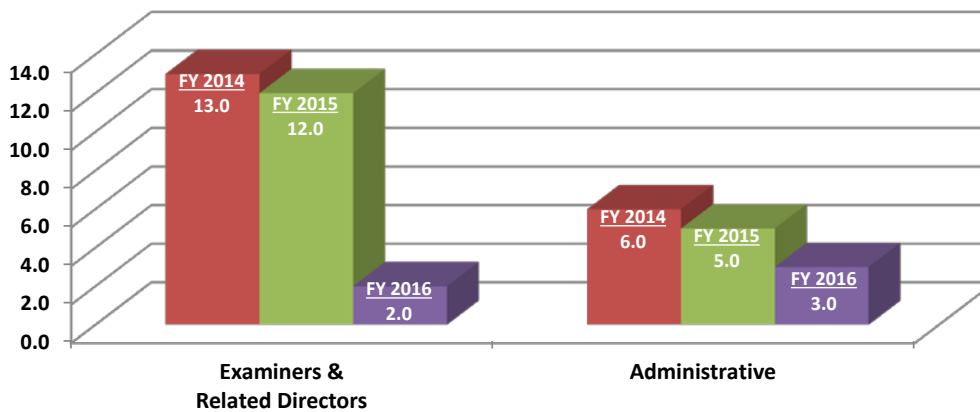
A Texas MSB license holder, Nationwide Biweekly Administration, Inc. (Nationwide), Xenia, Ohio, recently notified all of its customers that it has temporarily suspended processing customer loan payments. This was a result of Nationwide losing its banking relationships. Nationwide provided an accelerate loan repayment program to approximately 108,560 consumers in 50 states; of which, 8,480 of these customers are located in Texas.

Texas Department of Banking

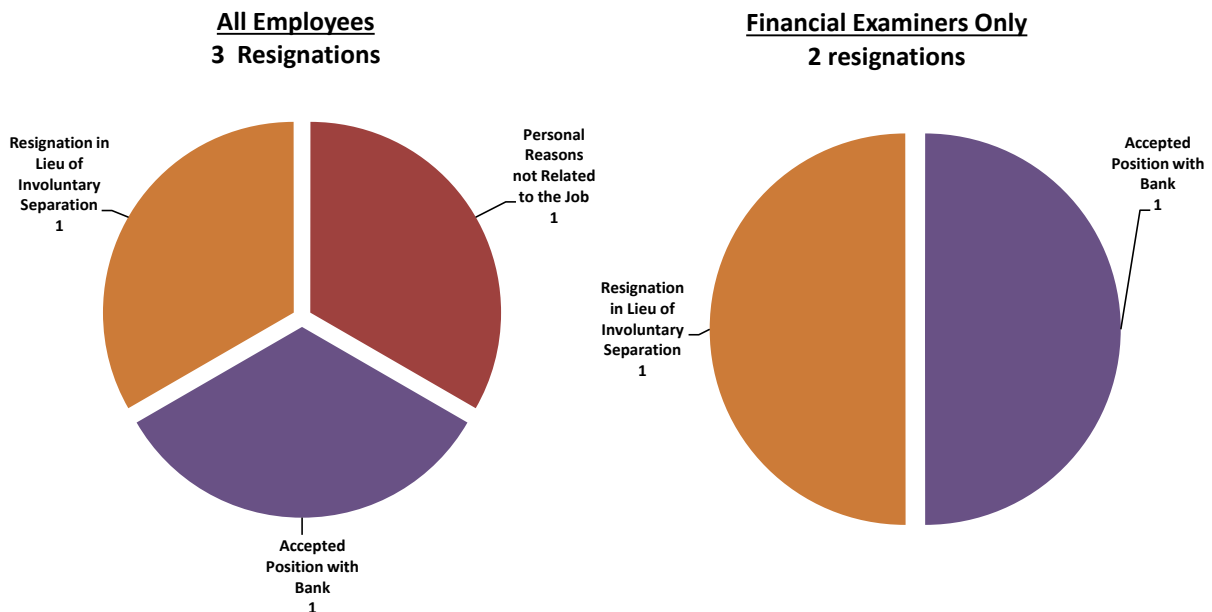
Employee Data for Fiscal Years 2014, 2015 and 2016 as of 11/30/15



New Hire Data for Fiscal Years 2014, 2015 and 2016



FY 2016 Employee Turnover Reasons





Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 / 877-276-5554
www.dob.texas.gov

To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support *WR*

Date: December 1, 2015

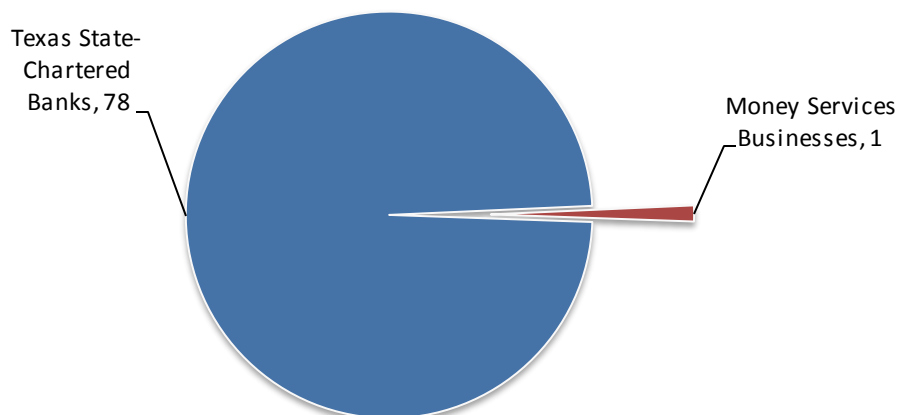
Subject: Summary of the Strategic Support Division Activities

Complaints on Regulated Entities September 2015 - October 2015



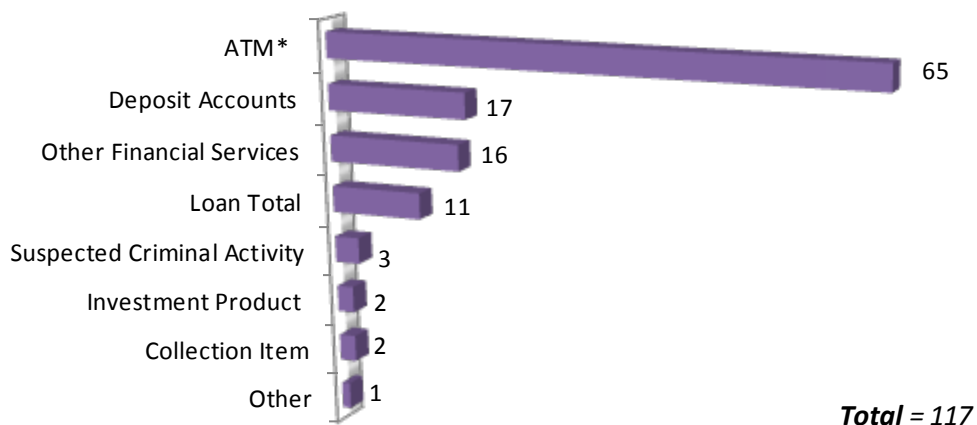
Recoveries = \$59,554.77
Total = 132

Inquiries on Regulated Entities September 2015 - October 2015



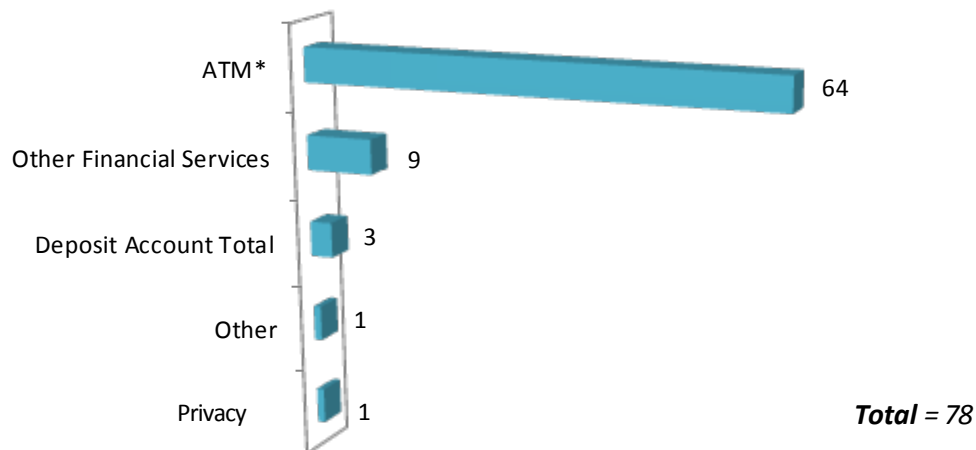
Total = 79

State-Chartered Banks and Trust Companies Complaints by Type September 2015 - October 2015



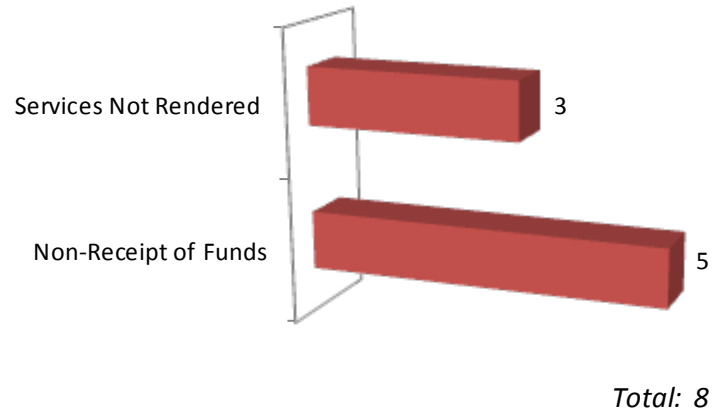
*High activity related to annual privacy notice containing the Department's contact information. Consumer complaints range from needing clarification of the notice to account balance issues and card related problems.

State-Chartered Banks and Trust Companies Inquiries by Type September 2015 - October 2015

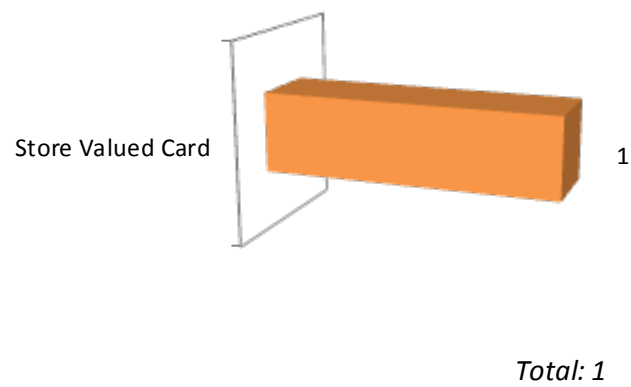


* Activity related to consumers inquiring about their personal accounts and outages in ATM network for one institution. Consumers contacted Department because the institution was experiencing a high call volume and they could not get through to entity.

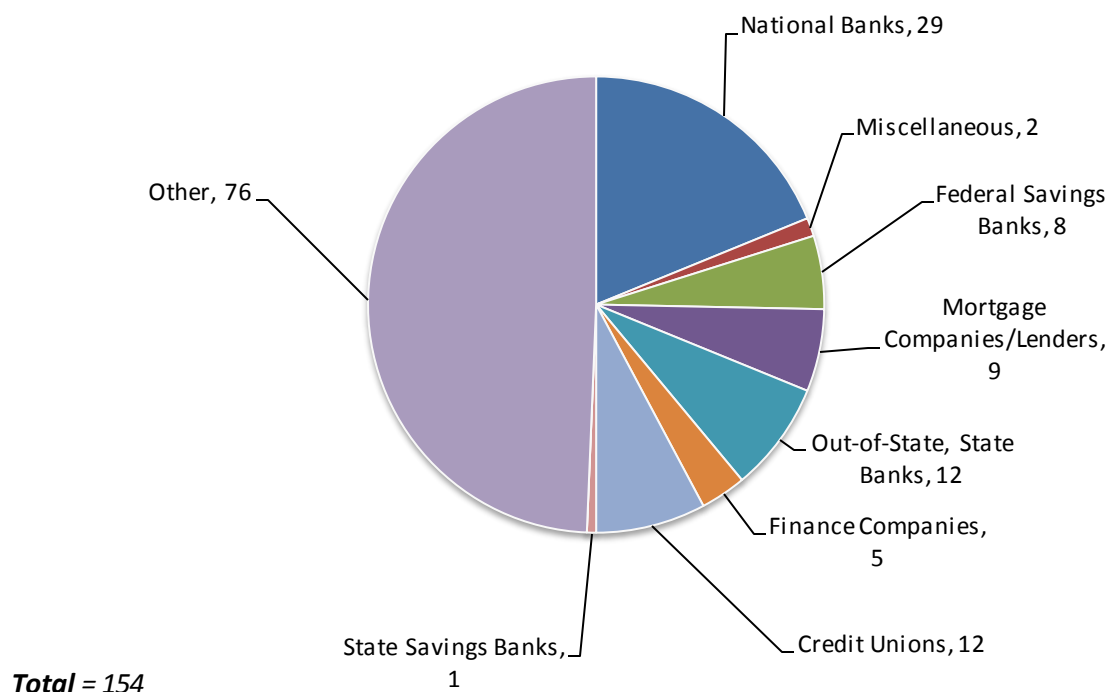
**Money Services Businesses
Complaints by Type
September 2015 - October 2015**



**Money Services Businesses
Inquiries by Type
September 2015 - October 2015**



Complaints and Inquiries Against Nonregulated Entities September 2015 - October 2015



Average Number of Days to Close a Complaint

Type	Sept. 2015 –Oct. 2015
State-Chartered Banks	15
Trust	n/a
PCSEA	n/a
PFC/PCC	29
MSB	45

CANS Activity January 1, 2012 – November 30, 2015

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	233	1,376
Texas State-Chartered Savings Banks	25	51
Federal Savings Banks	10	198
State Credit Unions	132	1,001
Federal Credit Unions	229	987
National Banks	168	450
Out-of-State State-Chartered Banks	11	0
Out-of-State National Banks	4	44
Total	812	4,107

Bank Examination Testing System (BETS) Activity

	FY 2013	FY 2014	FY 2015	FY 2016 Sep. Nov.
Number of Candidates Passing Each Phase				
I. General Knowledge	3	5	8	3
II. Loan Analysis	8	2	2	1
III. Panel	10	2	4	0
IV. Test Bank	11	1	4	0
Total FE3	16	14	19	

Promotions

From FE3 to FE4 (Commissioned Examiner)	9	2	4	0
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Other Divisional Items:

- **Law and Guidance Manual**
 - The desktop version of the law and guidance manual has been updated through September 30, 2015 and is available on the Department website.
- **Financial Education**
 - The Department hosted financial education Train-the-Trainer sessions in Houston and San Antonio in November. The program drew 58 registrants and featured the curriculum of the FDIC and the Federal Reserve Bank of Dallas.
 - A free webinar will be hosted on December 10, 2015. The featured topic is *Bankers and the Volunteer Income Tax Assistance (VITA) Program*. Mr. Johnnie Bowers with the Internal Revenue Service is the guest speaker.
- **Policies and Procedures**
 - Administrative Memorandum 2006 was revised to clarify the intent of the *Recommendations for Improvements* section of the report of examination. The clarification provides examination staff a clear guide on addressing weaknesses and concerns in the section.
- **Website**
 - The Texas Prepaid Funeral Contracts information [website](#) has been slotted for a redesign to be released in the first quarter of 2016. The project entails updating and reorganizing the content and redesigning the look of the site. As of November 30, 2015, the content has been reviewed and updated. The next phase of the project involves color scheme selection and design options.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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Memorandum

TO: Finance Commission Members

FROM: Catherine Reyer, General Counsel

DATE: December 1, 2015

RE: Legal Division Update

Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas. Plaintiffs filed this case on February 6, 2014, appealing the Banking Commissioner's order requiring them to pay \$56,000 in administrative penalties for numerous violations of Health and Safety Code provisions governing cemeteries. The case was heard by Judge Scott Jenkins on April 30, 2015. Judge Jenkins issued an order on May 4 affirming the Commissioner's order. The cemetery owner has filed an appeal to the Third Court of Appeals, and our reply brief was filed on November 23, 2015. Because Antioch has not obtained a supersedeas bond; the penalty from our administrative action is due and owing. We have referred the matter to the Collections Division of the OAG, and warrant holds have been issued.

State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery, Cause No. 2013-DCL-2248-B, In the 138th Judicial District Court of Cameron County, Texas. This was a case initially filed to seek the appointment of a receiver. The case has been non-suited, and we intend for the Attorney General's office to refile in Travis County.

State of Texas v. House Savings Investment, LLC, et al, Cause No. D-1-GV-13-000763, In the 353rd District Court of Travis County, Texas. On July 26, 2013, the district court issued a temporary restraining order and appointed a temporary receiver under the authority of Chapter 151, Texas Finance Code, to take control of two companies performing money services business activities (bi-monthly mortgage payments). An agreed permanent injunction and appointment of permanent receiver order was entered by the court on August 13, 2013. The receiver closed the company offices in Houston and is continuing to administer the estate, investigate misappropriation of customer funds, prosecute litigation against third parties, and pursue and recover estate assets. On November 25, 2015, the Court issued its second order to approve sale of real estate.

Contested Case Hearings

In re eDeposit Corporation, Docket No. BM-1504-15-058(DW). eDeposit was alleged to have engaged in the business of money transmission without a license, processing 59 transactions for customers in Texas totaling \$141,499.21 from January 2014 to November 2014. The Department issued an Order to Cease and Desist Activity on March 11, 2015. eDeposit requested a hearing on the Consent Order, but subsequently agreed to a Consent Order. The hearing has been dismissed.

Gifts Received by DOB

- No gifts have been received by the Department since the last Legal Division Memo was submitted.

Orders

Since the last Legal Division memo was prepared, the Commissioner issued nine orders, including the following final public orders:

Bank and Trust

- Order No. 2014-018a, Dated 9/30/2015; Order Terminating Consent Order, Normangee State Bank, Normangee, Texas

Special Audits

- Order No. 2015-024, Dated 11/6/2015; Consent Order, eDeposit Corporation, Rockville, MD
- Order No. 2015-025, Dated 11/23/2015; Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits, Brenham Memorial Chapel, Brenham, Texas
- Order No. 2015-026, Dated 11/23/2015; Order Approving Conversion from Trust-Funded Prepaid Funeral Benefits, Funeral Agency, Inc., Abilene, Texas
- Order No. 2011-027a, Dated 11/25/2015; Order Terminating Order to Cease and Desist Activity, Nhu Y. Inc., A.K.A. My Viet Services, Inc., Houston, Texas

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Objective

I am committed to philanthropic endeavors. Providing advocacy and compassionate care. I wish to utilize my professional skills and natural gifts to support and enhance the lives of others.

Skills and Attributes

Mediator and Advocate

Creative and Energetic

Able to remain objective and calm in crisis.

Absolute discretion in confidential matters.

Responsive to the needs and concerns of others.

Empathetic and discerning.

Thrives in bringing out the best in others.

Organized and task oriented.

Able to work independently, yet a team player.

Manages priorities efficiently and timely.

Excellent problem solving skills.

Education and Training

Accompanying the Dying LLC Certification (End- of -Life Doula)

Institute for Professional Care and Education. Alzheimer and Dementia training

Advanced Care Planning Facilitator Certification

Personal Care Attendant Certification

CASA (court appointed child advocacy)

Citizens Fire Academy

Citizens Police Academy

Hillcrest High School

PTSD Counselor

Professional References

Ms. Kristen Graham

Mrs. Deanna Cochran

Memberships

Funeral Consumers Alliance of North Texas, Daughters of the American Revolution, Dallas Museum of Fine Arts, First United Methodist Church of McKinney Texas

Employment History

Private Practice (12/2012-9/2013): Home caregiver and companion.

Visiting Angels (4/2015-11-2015): Care giver and companion for variety of clients

Heritage Keepers (12/2009-12/2011): Provided emotional support, home health care, transportation and managing the daily needs of senior clients.

North Dallas Crisis Pregnancy Center (1986-89): Original interim Director and Lay Counselor. Implemented vital support and recovery groups, provided emotional care, education and follow up for clients in crisis. Managed networking, resources and fundraising.

Allen Flower Shop (12/2012-4/2014): Floral design, business management.

Dermatology and Skin Surgery Center (4/2014-6/2014): Receptionist and front office manager.

Tom Motley Urban Garden (12/2010- Present): Manages marketing, event planning, bookkeeping, Inventory control and produce growth. Event display design, class demonstrations and educational seminars.

Talent Agent and Business Manager (1992-2011): Supervised the modeling and acting careers of three children.

McKinney Independent School District (2005-2009): Substitute Teacher for all grade levels.

Home School Educator (1990-Present): Provides early childhood instruction and support for Co-Op groups. Mentor to beginners and others interested in home schooling.

Jacket Required (1989- 91): Designed and manufactured women's jackets for wholesale distribution in DFW area.

Community Service and Global Outreach

Home bound Visitation, Hands and Hammers through First United Methodist Church of McKinney, Texas

Funeral Consumers Alliance of North Texas, board member.

HUGS Café (McKinney, TX): support role to adults with disabilities.

Real Options for Women (Plano, TX): Co-established Crises Pregnancy Center.

Mission to Cuba, 2009

Children's and Community Health Center (McKinney, TX): Medical and clerical volunteer, established rotating art gallery for clinic lobby.

Meals on Wheels (Dallas, TX): Volunteer

State Fair of Texas: Judge for Creative Arts Competition.

Generations to Come (Dallas, TX): support and guidance for inner city youth.

Dallas Lighthouse for the Blind: support to persons with visual impairments.